

5-28-96

IN THE MATTER OF	*	BEFORE
JENKINS FAMILY LTD PARTNERSHIP	*	
/SHIRLEYBROOK VILLAGE /XIV-338	*	COUNTY BOARD OF APPEALS
SE/S BABIKOW ROAD, SW/S		
SHIRLEYBROOK AVENUE	*	OF
11TH ELECTION DISTRICT		
6TH COUNCILMANIC DISTRICT	*	BALTIMORE COUNTY
RE: DENIAL OF DEVELOPMENT PLAN*		CASE NO. CBA-95-107
BY HEARING OFFICER AND		AND
PETITION FOR VARIANCE	*	CASE NO. 95-148-A

\* \* \* \* \*

ORDER OF DISMISSAL

This case comes before this Board on appeal from a decision of the Hearing Officer /Zoning Commissioner dated January 23, 1995 in which the subject Development Plan and Petition for Variances were denied.

WHEREAS, the Board is in receipt of an Order of Dismissal dated May 10, 1996 and received May 13, 1996, from Benjamin Bronstein and EVANS, GEORGE AND BRONSTEIN, and J. Carroll Holzer and HOLZER AND LEE, Counsel for Owner and Developer; and Douglas L. Burgess and NOLAN, PLUMHOFF AND WILLIAMS, and Leslie M. Pittler, Counsel for Protestants /Appellees (a copy of which is attached hereto and made a part hereof); and

WHEREAS, by said Order of Dismissal, it is requested that the appeal filed in this matter be dismissed with prejudice as of May 10, 1996;

IT IS HEREBY ORDERED this 28th day of May, 1996 by the County Board of Appeals of Baltimore County that said appeal be and the same is hereby DISMISSED with prejudice.

COUNTY BOARD OF APPEALS  
OF BALTIMORE COUNTY

Charles E. ...

A. Deane Lewis

Margaret Worrall

MICROFILMED


IN RE: DEVELOPMENT PLAN HEARING and	*	BEFORE THE
PETITION FOR VARIANCE - SE/S		
Babikow Road, SW/S Shirleybrook	*	DEPUTY ZONING
(Shirleybrook Village)		
11th Election District	*	COMMISSIONER OF
6th Councilmanic District		
	*	BALTIMORE COUNTY
Jenkins Family Ltd. Ptnr., Owners, and		
Sidney Emmer Builders, Inc., Developer	*	CASE NO.: XIV-338
		& 95-148-A

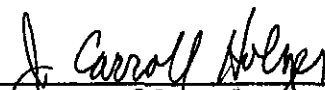
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ORDER OF DISMISSAL

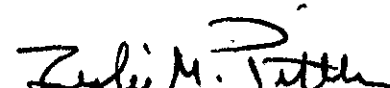
Please dismiss the above captioned matter with prejudice.

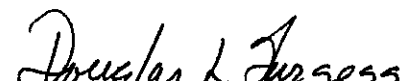
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Attorneys for Owner Jenkins Family  
Ltd. Ptnr. and Developer Sidney  
Emmer Builders, Inc./Appellants

  
\_\_\_\_\_  
Leslie M. Pittler  
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(410) 823-4455

  
\_\_\_\_\_  
Douglas L. Burgess  
Nolan, Plumhoff & Williams  
Court Towers, Suite 700  
210 West Pennsylvania Avenue  
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(410) 823-7800

Attorneys for Protestants/Appellees

MICROFILMED



County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

Jo fb

May 28, 1996

Benjamin Bronstein, Esquire  
EVANS, GEORGE AND BRONSTEIN  
Susquehanna Building, Suite 205  
29 W. Susquehanna Avenue  
Towson, MD 21204

RE: Case No. CBA-95-107 and Case No. 95-148-A  
Shirleybrook /PDM XIV-338 and  
Jenkins Family Ltd. Partnership

Dear Mr. Bronstein:

Enclosed please find a copy of the Order of Dismissal issued  
this date by the County Board of Appeals of Baltimore County in the  
subject matter.

Very truly yours,

*Charlotte E. Redcliffe for*  
Kathleen C. Bianco  
Administrative Assistant

encl.

cc: J. Carroll Holzer, Esquire  
Jenkins Family Ltd. Partnership  
Sidney Emmer Builders, Inc.  
David S. Thaler  
Douglas Burgess, Esquire  
Leslie M. Pittler, Esquire  
Preston Snedegar  
William C. McNeal  
Melvin Inners  
People's Counsel for Baltimore County  
Pat Keller, Director /Planning  
Donald T. Rascoe, Development Mgr. /PDM  
✓ Arnold Jablon, Director /PDM  
Douglas N. Silber, Asst. County Attorney  
Virginia W. Barnhart, County Attorney

MAILED  
MAY 28 1996

MICROFILMED



3-8-95

IN RE:	DEVELOPMENT PLAN HEARING and	*	BEFORE THE
	PETITION FOR VARIANCE - SE/S	*	
	Babikow Road, SW/S Shirleybrook	*	DEPUTY ZONING
	(Shirleybrook Village)	*	
	11th Election District	*	COMMISSIONER OF
	6th Councilmanic District	*	
		*	BALTIMORE COUNTY
Jenkins Family Ltd. Ptnr., Owners, and		*	
Sidney Emmer Builders, Inc., Developer		*	CASE NO.: XIV-338
		*	& 95-148-A
*	*	*	*
*	*	*	*

ENTRY OF APPEARANCE

Please enter the appearance of Leslie M. Pittler, as additional counsel for the Protestants in this matter.

*Leslie M. Pittler*

Leslie M. Pittler  
29 W. Susquehanna Avenue  
Suite 610  
Towson, Maryland 21204  
(410) 823-4455

95 MAR -8 PM 3:52

COUNTY CLERK  
JAN 10 1995

EXCERPT MED

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of March, 1995, a copy of the foregoing was hand delivered to Benjamin Bronstein, Esquire, 205 Susquehanna Building, 29 W. Susquehanna Avenue, Towson, Maryland 21204, to J. Carroll Holzer, Esquire, 305 Washington Avenue, Towson, Maryland 21204 and to Douglas Burgess,, Suite 700, 210 W. Pennsylvania Avenue, Towson, Maryland 21204.

  
\_\_\_\_\_  
Leslie M. Pittler

IN RE: DEVELOPMENT PLAN HEARING and	*	BEFORE THE
PETITION FOR VARIANCE - SE/S		
Babikow Road, SW/S Shirleybrook	*	DEPUTY ZONING
(Shirleybrook Village)		
11th Election District	*	COMMISSIONER OF
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	*	BALTIMORE COUNTY
Jenkins Family Ltd. Ptnr., Owners, and		
Sidney Emmer Builders, Inc., Developer	*	CASE NO.: XIV-338
		& 95-148-A

\* \* \* \* \*

APPEAL PETITION OF OWNER AND DEVELOPER

Jenkins Family Limited Partnership, Owners, and Sidney Emmer Builders, Inc., Developer, by Benjamin Bronstein and Evans, George and Bronstein and J. Carroll Holzer, their attorneys, pursuant to Baltimore County Code, §26-209(a)(1), hereby file this Petition in support of the Notice of Appeal from the decision of the Deputy Zoning Commissioner/Hearing Officer entered in the above captioned case on January 23, 1995.

1. The Deputy Zoning Commissioner/Hearing Officer erred in failing to give proper deference to the dictates of the Baltimore County Council as set forth in the 1979-1990 Master Plan, the Perry Hall/White Marsh Plan, the 1989-2000 Master Plan, and the underlying zoning of DR 5.5 on the property.

2. The Deputy Zoning Commissioner/Hearing Officer erred in defining the neighborhood so as to exclude other townhouse developments in the White Marsh Growth Area.

3. The Deputy Zoning Commissioner/Hearing Officer erred in defining the neighborhood in a way contrary to the express intent of the Baltimore County Council and in a way which would prohibit

UNRECORDED

townhouse development up to the M.L. zoned industrial areas of the White Marsh Town Center.

4. The Deputy Zoning Commissioner/Hearing Officer erred in applying the compatibility guidelines set forth in Baltimore County Code, §26-282(b) as mandatory requirements.

5. The Deputy Zoning Commissioner/Hearing Officer erred in applying the compatibility guidelines to the Shirleybrook Village development, which is located in a growth area, in the same manner as if the proposed development were located in an infill area, contrary to the intentions of the Baltimore County Council.

6. The Deputy Zoning Commissioner/Hearing Officer erred in applying the compatibility guidelines in a way that is contrary to the intent of the Development Regulations, the Baltimore County Zoning Regulations, the Comprehensive Manual Design Policies, and subverts the express intent of the Baltimore County Council to provide for and channel more intensive development than presently exists into the growth area of White Marsh.

7. The Deputy Zoning Commissioner/Hearing Officer erred in denying approval of the development plan on the basis of certain factors which should properly have been the subject of conditions imposed on approval of the development.

8. The Deputy Zoning Commissioner/Hearing Officer erred in finding that the Shirleybrook Village development plan does not satisfy the compatibility objectives set forth in Baltimore County Code, §26-282(b).

9. The Deputy Zoning Commissioner/Hearing Officer erred in

finding that the Shirleybrook Village development plan was not compatible with the surrounding neighborhood.

10. The Deputy Zoning Commissioner/Hearing Officer erred in finding that the Shirleybrook Village development plan failed to satisfy compatibility objective no. 1 on the basis that "the proposed Shirleybrook Village townhouses are not patterned in a similar manner to the existing homes in this neighborhood." (Opinion and Order at p. 41-42) This finding by the Hearing Officer translates into a blanket prohibition against townhouses in any area zoned DR 5.5 where townhouses do not already exist.

11. The Deputy Zoning Commissioner/Hearing Officer erred in finding that the Shirleybrook Village development plan did not meet compatibility objective no. 2 on the basis that "the space between these townhouse buildings is less than that provided between other building patterns in this neighborhood." and that "parking layouts do not reinforce the single family parking patterns found in this neighborhood." (Opinion at p. 42) Similarly, this finding equates to a blanket prohibition against any townhouse development in any area zoned DR 5.5 where there presently exists single family detached dwellings but not other existing townhouses.

12. The Deputy Zoning Commissioner/Hearing Officer erred in finding that the Shirleybrook Village development failed to satisfy compatibility objective no. 3 on the basis that "the proposed sidewalks do not support the functional patterns of the Shirleybrook neighborhood in that there are no sidewalks along Babikow Road or Shirleybrook Avenue which are the roads immediately



adjacent to the proposed development." (Opinion at p. 42) This finding equates to a blanket prohibition against any development plan in any area which lacks existing sidewalks. Baltimore County requirements would mandate sidewalks even where the proposed development to contain single family detached dwellings. The "finding" of the Deputy Zoning Commissioner/Hearing Officer on this issue would deny approval to a single family detached dwelling proposal that included sidewalks. This determination cannot be sustained.

13. The Deputy Zoning Commissioner/Hearing Officer erred in finding that the Shirleybrook Village development plan failed to satisfy compatibility objective no. 4. As the Deputy Zoning Commissioner/Hearing Officer conceded,

It should be noted that the Developer has done an excellent job in his utilization of open space in the proposed townhouse development. I have not encountered a townhouse community which has been better designed with open spaces than Shirleybrook Village. I believe the Developer has done an excellent job in designing the open space systems for this development.

(Opinion at p. 43) The Zoning Commissioner also conceded that "the proposed Shirleybrook Village development would fit in nicely on property adjacent to the Southfield Townhouse development or the Castlestone townhouse development . . . ." (Opinion at p. 43) Notwithstanding the quality of the design, the Deputy Zoning Commissioner/Hearing Officer concluded that it did not meet the compatibility objective no. 4 on the basis that "this is not the appropriate location for a townhouse community." (Opinion at p.

43)

14. The Deputy Zoning Commissioner/Hearing Officer erred in finding that the Shirleybrook Village development plan failed to satisfy compatibility objective no. 5 because it did not preserve unimpaired the view of an adjoining property owner.

15. The Deputy Zoning Commissioner/Hearing Officer erred in finding that the Shirleybrook Village development plan failed to satisfy compatibility objective no. 6 on the basis that additional landscaping should have been required. This concern should more properly been addressed by imposition of a condition on the approval of the development plan.

16. The Deputy Zoning Commissioner/Hearing Officer erred in finding that the Shirleybrook Village development plan failed to satisfy compatibility objective no. 7 because he was unable to review a final draft of covenants and restrictions. (Opinion at p. 44) This concern is one which more properly should have been addressed by the imposition of a condition on approval of the development plan, rather than denial of the plan.

17. The Deputy Zoning Commissioner/Hearing Officer erred in finding that the Shirleybrook Village development plan failed to satisfy compatibility objective no. 8 on the basis that the proposed townhouse units are larger in size than those in the single family detached dwellings sprinkled throughout the surrounding area.

18. The Deputy Zoning Commissioner/Hearing Officer erred in denying the plan on the basis that there was inadequate sight

distance, where the evidence before the Hearing Officer established that there was an alternative alignment to the road which would resolve this issue and that a nearby property owner was intentionally restricting the sight distance.

19. The Deputy Zoning Commissioner/Hearing Officer erred in denying the variances, modifications of CMDP standards, and waivers of public works requirements. The evidence established the uniqueness of the property and that the requested variances, modifications and waivers increased the compatibility of the project with the surrounding neighborhood within the ambit of Baltimore County Code, §26-282(b), and enhanced the site design quality of the Shirleybrook Village development plan.

And for such other and further reasons as may be raised at the hearing of this matter.

EVANS, GEORGE AND BRONSTEIN



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Attorneys for Owner Jenkins Family  
Limited Partnership and Developer  
Sidney Emmer Builders, Inc.

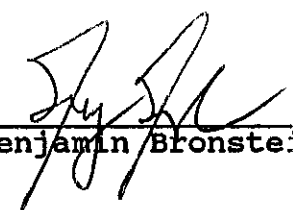
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 31 day of January, 1995, a copy of the foregoing was mailed, postage pre-paid to Timothy M. Kotroco, Deputy Zoning Commissioner for Baltimore County, Courthouse, 400 Washington Avenue, Towson, Maryland 21204; and to Douglas Burgess, Esquire, Nolan, Plumhoff & Williams, Court Towers, Suite 700, 210 West Pennsylvania Avenue, Towson, Maryland 21204, attorney for Protestants.

  
\_\_\_\_\_  
Benjamin Bronstein

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JAN 31 1995

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LETTER RECORDED

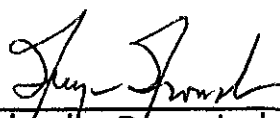
IN RE: DEVELOPMENT PLAN HEARING and \* BEFORE THE  
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Babikow Road, SW/S Shirleybrook \* DEPUTY ZONING  
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11th Election District \* COMMISSIONER OF  
6th Councilmanic District \* BALTIMORE COUNTY  
Jenkins Family Ltd. Ptnr., Owners, and \*  
Sidney Emmer Builders, Inc., Developer \* CASE NO.: XIV-338  
& 95-148-A


\* \* \* \* \*

NOTICE OF APPEAL

Jenkins Family Limited Partnership, Owners, and Sidney Emmer Builders, Inc., Developer, by Benjamin Bronstein and Evans, George and Bronstein and J. Carroll Holzer, their attorneys, enter an appeal pursuant to Baltimore County Code, §26-209 and Baltimore County Zoning Regulations, §500.10, from the decision of the Deputy Zoning Commissioner/Hearing Officer dated January 23, 1995, which denied the development plan for Shirleybrook Village and further denied the Petition for Variance seeking relief from the Baltimore County Zoning Regulations and the Comprehensive Manual of Development Policies.

EVANS, GEORGE AND BRONSTEIN

  
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Attorneys for Owner Jenkins Family  
Limited Partnership and Developer  
Sidney Emmer Builders, Inc.

**CERTIFICATE OF SERVICE**

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\_\_\_\_\_  
Benjamin Bronstein

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JAN 31 1995

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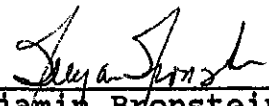
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Jenkins Family Ltd. Ptnr., Owners, and \*  
Sidney Emmer Builders, Inc., Developer \* CASE NO.: XIV-338  
& 95-148-A


\* \* \* \* \*

**REQUEST FOR ORAL ARGUMENT**  
**AND SUBMISSION OF WRITTEN BRIEFS**

Jenkins Family Limited Partnership, Owners, and Sidney Emmer Builders, Inc., Developer, by Benjamin Bronstein and Evans, George and Bronstein and J. Carroll Holzer, their attorneys, requests oral argument and the Board of Appeals receive written briefs in the above captioned appeals.

EVANS, GEORGE AND BRONSTEIN

  
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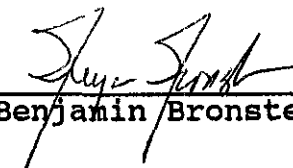
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Attorneys for Owner Jenkins Family Limited Partnership and Developer Sidney Emmer Builders, Inc.

ENCLOSURE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31 day of January, 1995, a copy of the foregoing was mailed, postage pre-paid to Timothy M. Kotroco, Deputy Zoning Commissioner for Baltimore County, Courthouse, 400 Washington Avenue, Towson, Maryland 21204; and to Douglas Burgess, Esquire, Nolan, Plumhoff & Williams, Court Towers, Suite 700, 210 West Pennsylvania Avenue, Towson, Maryland 21204, attorney for Protestants.

  
\_\_\_\_\_  
Benjamin Bronstein

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1-23-95

IN RE: DEVELOPMENT PLAN HEARING and \* BEFORE THE  
PETITION FOR VARIANCE - SE/S \*  
Babikow Road, SW/S Shirleybrook \* DEPUTY ZONING COMMISSIONER  
(Shirleybrook Village) \*  
11th Election District \* OF BALTIMORE COUNTY  
6th Councilmanic District \*  
Case No. XIV-338 & 95-148-A  
Jenkins Family Ltd. Part., Owners, and \*  
Mr. Sidney Emmer, Developer \*

\* \* \* \* \*

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before this Deputy Zoning Commissioner/Hearing Officer for consideration of a development plan, prepared by D. S. Thaler and Associates, Inc., for the proposed development of the subject property by the Jenkins Family Limited Partnership, Owners, and Sidney Emmer, Developer, with two single-family dwellings and 105 townhouse dwellings. In addition to development plan approval, the Applicants seek relief, pursuant to the Petition for Variance, from the Baltimore County Zoning Regulations (B.C.Z.R.) and the Comprehensive Manual of Development Policies (C.M.D.P.) as follows: From Section 1B01.2.C.1.c and CMDP IIA, p.19, to permit a side building setback to a public street right-of-way of 15 feet in lieu of the required 25 feet; from Section 504.2 and CMDP IIA, p.21, to permit a maximum of 13 parking spaces not separated by an island or peninsula in lieu of the maximum permitted 10 parking spaces; from Section 301.1.A and 1B01.2.C.1.c to permit a rear property line setback of 18 feet in lieu of the required 22.5 feet for open projections, and to permit accessory structures and fences to be located in Residential Transition Areas (RTA) not subject to the 75-foot setback requirements; and from Section 413.1.E.1 to permit a double-faced community identification sign of 168 sq.ft. in lieu of the maximum permitted 15 sq.ft.

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The property which is the subject of this hearing consists of a gross area of 22.31 acres, more or less, zoned D.R. 5.5, and is located on the southeast side of Babikow Road, just northwest of the John F. Kennedy Memorial Highway (I-95). The subject property and relief sought are more particularly described on the development plan submitted and marked into evidence as Developer's Exhibit 7.

As to the history of this project, the concept plan conference for this development was conducted on May 16, 1994. As required, a community input meeting was held at the White Marsh Branch Library on June 22, 1994. Subsequently, a second concept plan was developed and a conference thereon was conducted on July 11, 1994. Following the submission of that plan, a second community input meeting was held at the Joppa View Elementary School on August 3, 1994. A second development plan conference was held on November 2, 1994, after which development plan comments were submitted by the appropriate agencies of Baltimore County. A revised development plan incorporating these comments and bearing a last revised date of November 9, 1994 was submitted at the public hearing held before me on November 30, 1994. It should be noted that at the request of the Protestants, the hearing was continued to allow the Protestants time to hire an attorney to represent them in these proceedings. The hearing was then rescheduled to be heard over the course of four hearing dates, namely, January 4th, 5th, 9th and 10th of 1995.

Appearing at the public hearings on behalf of this project were Mr. Sidney Emmer, Developer, Messrs. David S. Thaler, Professional Engineer, and Allan Scoll, Landscape Architect with D. S. Thaler and Associates, Inc., and Benjamin Bronstein and J. Carroll Holzer, Esquire, attorneys for the Owners and Developer. Many residents from the surrounding

community appeared in opposition, as did members of the South Perry Hall Boulevard Improvement Association, some of whom were represented by Douglas Burgess, Esquire.

At the preliminary stage of any development plan hearing, I am required to determine what, if any, agency comments or concerns remain unresolved. In this particular case, Mr. Benjamin Bronstein, on behalf of the Developer, stated that they were unaware of any unresolved comments or conditions which needed to be addressed. In addition, all of the representatives from the various Baltimore County reviewing agencies in attendance also stated that they were not aware of any unresolved issues or conditions and, in fact, recommended approval of the development plan as submitted. Mr. Douglas Burgess, who represented the South Perry Hall Boulevard Improvement Association and several individuals who appeared in opposition, was then asked whether he was aware of any unresolved issues or conditions which needed to be addressed, at which time he identified approximately 13 issues which will be dealt with on an individual basis later in this opinion. It was then determined that there was a need to take testimony on those unresolved issues and such testimony will be summarized within the body of this opinion.

Prior to taking testimony on the issues raised by Mr. Burgess on behalf of the members of the community, both Mr. Bronstein and Mr. Burgess raised preliminary Motions concerning this Hearing Officer's Hearing.

#### PRELIMINARY MOTIONS

Prior to taking testimony on the issues raised by Mr. Burgess, Motions to Dismiss were argued by both Mr. Bronstein and Mr. Burgess. On behalf of his clients, Mr. Burgess moved to dismiss this Hearing Officer's Hearing and argued in support of that Motion that he was denied an opportu-

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nity for discovery in this matter. He asserted that he did not have the opportunity to review any reports of any experts which might be offered by the Developer at this hearing. He asserted that not having an opportunity to review them prior to the hearing would be in essence to deny discovery to his clients and would prejudice his ability to provide adequate assistance of counsel to his clients. At the hearing, Mr. Burgess' Motion to Dismiss was denied in that this Administrative Process and this Hearing Officer's Hearing does not afford a process for discovery, nor are there any rules of discovery provided within either the Baltimore County Code or the Baltimore County Zoning Regulations (B.C.Z.R.).

Mr. Burgess then raised as a Second Motion to Dismiss the argument that the subject property was not properly posted for the hearing which commenced on January 4, 1995. As noted earlier in this opinion, this hearing was originally slated to be heard on November 30, 1994. However, at that time, the Protestants and other residents of the community requested a continuance of the hearing in order to prepare their case. That continuance was granted and all members of the community who attended the original hearing were advised that day of the new hearing dates which commenced January 4, 1995. Furthermore, I instructed Mr. Joseph Maranto, Project Manager for this development, to personally notify, via the U.S. Mail, all those individuals who attended either of the two Community Input Meetings (CIM) which were held prior to the first Hearing Officer's Hearing on November 30, 1994. Mr. Maranto did, in fact, mail a Notice of Hearing to all of those individuals who signed in at either of the two CIMs. As a third precautionary measure, I asked that Mr. Maranto have the property reposted to give additional notice of the continued hearing date of January 4, 1995. Mr. Maranto stated that he submitted the request for

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the property to be reposted, but in fact, the property was not. Therefore, Mr. Burgess argues that it is not proper to proceed at this time in that the property was not posted a second time and that the community did not have sufficient notice of the hearing before me on January 4, 1995.

I disagreed with Mr. Burgess and denied his Motion to Dismiss based upon the fact that I believe ample notice was given, both at the hearing on November 30, 1994 and by virtue of the Notice of Hearing cards which were mailed to all persons who attended either of the two Community Input Meetings. Furthermore, at the hearing on January 4, 1995, there appeared approximately 80 people from the surrounding community, who, in my opinion, adequately represented the interests of those residents who live in the neighborhood surrounding the proposed development. For these reasons, Mr. Burgess' Second Motion to Dismiss was denied.

Mr. Burgess then raised a Third Motion to Dismiss, wherein he argued that the hearing was not proceeding in accordance with the Baltimore County Code. Mr. Burgess asserted that the Director of the Office of Planning and Zoning (OPZ) failed to make the requisite compatibility findings, as required by Section 26-282 of the Baltimore County Code (B.C.C.). He argued that the recommendation that was made by the Director of OPZ was only conclusory in nature and did not have any findings to support his conclusion. Furthermore, he argued that the neighborhood surrounding the Shirleybrook Village development was never defined by the Director of OPZ in his recommendation. For these reasons, Mr. Burgess argued that the hearing was not proceeding properly and moved to dismiss the hearing on that basis.

I denied Mr. Burgess' Third Motion to Dismiss in that I found that the issue of the recommendation of compatibility by the Director of

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OPZ could be explored and examined by Mr. Burgess in the body of this hearing. I felt that it was premature for Mr. Burgess to raise this issue by way of a Motion to Dismiss and felt that it should be an issue raised and addressed during the course of the hearing. Therefore, I denied his Third Motion to Dismiss.

Mr. Burgess then raised a Fourth Motion to Dismiss, which was one of a constitutional argument. Mr. Burgess asserted that the community was not permitted to have input into the compatibility findings of the Director of OPZ, pursuant to Section 26-282 of the B.C.C. Mr. Burgess asserted that inasmuch as the community was not asked to participate in that compatibility study, they have been denied their right to participate and that this hearing should be dismissed on that basis. This Fourth Motion to Dismiss was denied in that the B.C.C. does not provide for community input at the time the Director of OPZ makes his recommendation. The community has ample opportunity before this Hearing Officer to attack any compatibility finding made by the Director of OPZ. Again, I believe that this Motion was improper in that it was premature and that the community would have ample opportunity during the course of this hearing to attack any compatibility finding made by the Director of OPZ.

The next Motion to Dismiss raised by Mr. Burgess was that the proposed development conflicts with the Master Plan and should be referred to the Planning Board. This Motion was denied in that, again, I believe this to be more of an unresolved issue which can be addressed through the testimony and evidence presented at the hearing as opposed to granting a Motion to Dismiss. Therefore, this Fifth Motion to Dismiss was denied.

Mr. Burgess also argued, by way of a Sixth Motion to Dismiss, that the red-lined changes proposed by the Developer of this project should

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be resubmitted through an additional community input meeting. He argues that his clients have not had sufficient opportunity to review these red-lined changes and therefore, the matter should be dismissed and referred back for a third community input meeting.

Section 26-204 of the B.C.C. specifies when a development plan should be resubmitted for a community input meeting. Subsection (b) thereof provides that in the event a development plan is inconsistent with the concept plan, the matter can be remanded for an additional community input meeting. Inasmuch as the red-lined changes to the development plan were minor in nature and did not constitute a material change to the plan, it was not necessary for this matter to go through a third community input meeting. Therefore, Mr. Burgess' Sixth Motion to Dismiss was denied.

Finally, Mr. Burgess raised a Motion to Dismiss the Petition for Variance in the companion Case No. 95-148-A in that the variance requests were not technically in accordance with the B.C.Z.R. Mr. Burgess argued that the Petition for Variance was not properly signed by all appropriate parties. I disagreed with Mr. Burgess in this argument and found this Petition to be properly before me. I therefore denied this Motion to Dismiss.

In addition to the Motions raised by Mr. Burgess, Mr. Bronstein, on behalf of the Developer, raised a Motion to Dismiss, and argued that there was no need to take any testimony concerning the development plan in that all Baltimore County reviewing agencies had recommended approval of same. Mr. Bronstein argued that inasmuch as the plan met with all development regulations of Baltimore County, the plan should be approved. I disagreed with Mr. Bronstein's arguments and denied his Motion asserting that the community is a party to these proceedings and has the right to

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raise its own issues concerning the plan being submitted. Therefore, his Motion was denied and testimony was then taken regarding the issues raised by the community through Mr. Burgess.

THE TESTIMONY OF THE CASE

After Counsel for both the Applicants and the Protestants an opportunity to argue their Motions, I next afforded an opportunity to the Developer to offer any testimony and evidence he wished me to consider regarding the development plan. Mr. Bronstein called Mr. Allan Scoll, a Licensed Landscape Architect with D. S. Thaler and Associates, Inc. to testify. Mr. Scoll's limited testimony involved the identification of all of the Developer's supporting documents, marked as Developer's Exhibits 2 through 13. It should be noted that the Project Manager's case file was entered into evidence as Developer's Exhibit 1. After identifying these Exhibits, Mr. Scoll concluded his testimony.

Mr. Bronstein did not call any additional witnesses other than Mr. Scoll in that he did not raise, nor did Baltimore County raise, any unresolved issues or comments concerning the development plan and exhibits submitted into evidence.

Mr. Burgess was then offered the opportunity to present any testimony and evidence in support of the issues raised by his clients. The first witness called by Mr. Burgess was Mr. Thomas Seymour, who resides at 7719 Babikow Road and is the president of the South Perry Hall Boulevard Community Association. Mr. Seymour testified that his Association was formed specifically to battle the proposed development of the subject site known as Shirleybrook Village. Mr. Seymour offered as Protestant's Exhibit 1 an affidavit of those individuals authorized to speak on behalf of the community association, of which he was one.

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Also called to testify on behalf of the Protestants was Mr. Ken Tilton. Mr. Tilton has resided for the past 23 years at 7834 Babikow Road. Mr. Tilton testified that his house is approximately 48 years old. Mr. Tilton testified concerning traffic counts made by him as to the number of vehicles traveling along Babikow Road on any given day. Mr. Tilton testified that on two separate occasions he sat in his driveway and counted the number of vehicles traveling north and south on Babikow Road. The results of his traffic count was submitted into evidence as Protestant's Exhibits 2A, 2B, 2C and 2D. Furthermore, Mr. Tilton testified as to traffic counts made by another resident of the community, Mrs. Thomas Seymour. Mrs. Seymour counted vehicles on December 15, 1994 and her report was accepted into evidence as Protestant's Exhibits 2E and 2F. Mr. Tilton testified that these traffic counts were taken at a time when Essex Community College was not in full session and therefore, the counts were somewhat conservative. He testified that in actuality there may be more vehicles using Babikow Road, when Essex Community College is in full session.

Mr. Tilton went on further to testify concerning Babikow Road. He testified that Babikow Road used to be a concrete road but was recently paved with macadam by Baltimore County. He stated that there are no sidewalks or shoulders along Babikow Road and that this road is posted with a 30 MPH speed limit. However, most motorists traveling along this road drive in excess of the posted speed.

Mr. Tilton testified concerning the difficulty he, as well as other residents, have with backing out of their driveways onto Babikow Road, given the current status of traffic traveling Babikow Road. He stated that since the opening of Perry Hall Boulevard which leads into the White Marsh Towncenter, Babikow Road has become somewhat of a shortcut by

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members of the general public. He testified that this is contributing to the increase in traffic along Babikow Road.

Mr. Tilton next testified concerning the 400-foot sight line distance shown by the Developer on Developer's Exhibit 7. He testified that this sight line traverses the property owned by Mr. & Mrs. Buontempo. Mr. Tilton believes that there are existing trees on the Buontempo property that interfere with the clear sight line along this 400-foot distance. Therefore, he believes that this sight line is inaccurate and that there is difficulty seeing vehicles traveling south on Babikow Road towards the entrance to the proposed development. He further testified that he is not aware of any agreement between the Developer and the Buontempo family which would prevent the Buontempos from providing additional landscaping on their property that would further impede the 400-foot sight line provided by the Developer.

Mr. Tilton further testified regarding a video tape that he and his wife made for the purpose of this hearing. This video tape was accepted into evidence as Protestant's Exhibit 3. Mr. Tilton testified that he and his wife, using their personal automobile, drove up and down Babikow Road on January 2, 1995 and video-taped the homes along this route as well as the various changes in elevation and existing conditions of the road. The purpose of providing this tape was to better familiarize this Hearing Officer with the Babikow Road community.

Also called to testify by Mr. Burgess was Mrs. Peggy Winchester. Mrs. Winchester has resided northeast of the proposed development at 5012 Shirleybrook Avenue for the past 30 years. Mrs. Winchester testified as to the adverse consequences she believes she will experience as a result of the proposed development. She testified that when looking from her

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home in a southwesterly direction across Shirleybrook Avenue to this proposed development, she will see what she terms "the wall of Jericho". She uses this terminology to describe the three townhouse buildings that are proposed to be situated atop a knoll that exists on the southwest side of Shirleybrook Avenue. These buildings are depicted on the Development Plan as Buildings 1, 2 and 3. Each of these buildings will contain seven (7) townhouse dwelling units and are proposed to be located a distance of 20 feet apart. Mrs. Winchester believes that these three buildings will appear to be one solid walled mass running across the top of this knoll which is located just southwest of Shirleybrook Avenue. Furthermore, Mrs. Winchester objects to the small rear yards which are proposed to be provided for these townhouses. She also objects to any decks, fences, and sheds, being located in these small rear yards which she feels will adversely affect her property. She is equally concerned that individuals who purchase these particular homes will park their automobiles along Shirleybrook Avenue and not take advantage of the on-site parking to be provided by the Developer. She believes it will be just as short a walk for any homeowner to park in the rear of their property along Shirleybrook Avenue as it would be to park on-site.

Mrs. Winchester is also concerned over the proposed height of these townhouses and the visual impact this will have on her property. When reviewing the Development Plan, it is clear that her house sits on the 130-foot topo (elevation) line. The topo-line running through the area where these townhouses are proposed is approximately 150 feet. Therefore, Mrs. Winchester believes the proposed townhomes will extend too high in the air and cause adverse consequences to the visibility and view she currently enjoys from her home. Mrs. Winchester further objects to town-

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houses being located on this property in that they are not compatible or consistent with other homes in the Babikow Road community. All of the homes in the community are single family dwellings situated on relatively large lots. The proposed townhouses in her opinion will be out of character with existing homes in this community.

Mrs. Winchester further testified that she would have no objection to the Developer building single family homes on this property. She realizes that this property has development potential, but argued that any development should be consistent with existing houses in the Babikow Road community. Therefore, she would not be opposed to single family dwellings.

On cross-examination, Mrs. Winchester testified that she was aware that Baltimore County had instituted the White Marsh Growth Plan for this area. She stated that she has attended public hearings on that Plan but did not participate in any requests for down-zoning of this property. She further testified that she is opposed to "Road D" which appears to provide access to Shirleybrook Avenue from the proposed development. She objects to Road D as a possible access route to the development in that it would cause additional traffic to utilize Shirleybrook Avenue.

Mrs. Winchester further testified that the existing vegetation on the southwest side of Shirleybrook Avenue is not sufficient to provide ample screening of the proposed townhouses. She also stated that the existing vegetation is not accurately depicted on the sight elevation drawings prepared by the Developer. She believes that the Developer has embellished somewhat concerning the existing vegetation on that area of the property bordering Shirleybrook Avenue. Mrs. Winchester believes that given the height of the townhouses atop the knoll which is higher in eleva-

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tion than her home, no landscaping would adequately buffer the proposed townhouses from her property.

Next called to testify on behalf of the Protestants was Mrs. Joanne Buontempo. Mrs. Buontempo resides at 7817 Babikow Road and has lived in the Babikow Road area for the past 33 years. Mrs. Buontempo testified that her current residence has been in her family since 1927 and that her maiden name was Winterstein, a family that moved to this area in the 1880s. Mrs. Buontempo testified that the property which is the subject of this development plan hearing was actually owned by her family at one time.

Mrs. Buontempo testified out of concern for the sight distance which is shown on the plan as being 400 feet in length. This sight line transects the front yard of the Buontempo property which is situated north-east and immediately adjacent to the proposed development. Mrs. Buontempo testified that this sight line actually runs directly across her parking pad and driveway which are situated in the front of her property. Vehicles parked in her driveway interfere with this sight line. She testified that there currently exists a pine tree which also obstructs this sight line. Further testimony indicated that she and her husband have hired a landscape architect to design a landscape plan for their property and that the plan they have developed proposes plantings which will further obstruct this sight line. Ms. Buontempo testified that she has reached no agreement with the Developer to keep this sight line free and clear of any obstructions, be it bushes, trees, or the parking of their automobile in their own driveway. She drew on a copy of the site plan marked into evidence as Protestant's Exhibit 4 the location of her driveway. She stated that the sight line shown by the Developer does not provide a free and

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clear view of vehicles exiting the proposed entrance road to Shirleybrook Village. Mrs. Buontempo further testified that she believes police protection for the Babikow Road community is inadequate and that adding more homes will further exacerbate the strained level of police protection for this area.

Next called to testify on behalf of the Protestants was Mr. Preston Snedegar who resides at 4928 Ridge Road. Mr. Snedegar is a licensed Certified Public Accountant, but has done some development work as a side business in Baltimore County. Mr. Snedegar testified as to the character of the Babikow Road community and surrounding neighborhood. Mr. Snedegar provided this Hearing Officer with many photographs of the Babikow Road community, both of Babikow Road as well as the single family dwellings located along Babikow Road, Linda Avenue, Shirleybrook Avenue, and other smaller streets in the interior of this community. He testified as to the representations made in the photographs that the Babikow Road community consists of single family dwellings located on larger than average lots.

Mr. Snedegar testified concerning his reasons for opposing the requested variances, modifications and waivers requested by the Developer. He testified that he is opposed to a townhouse development and believes that the subject property can be adequately developed with single family homes. Mr. Snedegar prepared and submitted into evidence as Protestant's Exhibit 10, a concept plan showing how he believes the subject property would appear if developed with single family homes. It is clear that the concept plan prepared by Mr. Snedegar is a crude attempt by a layman to lay out the subject property with single family lots. Mr. Snedegar is not a professional engineer and admitted that in his testimony. He also admitted on cross examination that the single family lots he laid out were not

reviewed by any County agency and he was not sure whether the plan that he proposed would be accepted by Baltimore County. His plan was merely an attempt to show an alternative way of developing this property with single family homes.

Mr. Snedegar testified that he, too, is not opposed to single family homes on this property and stated that single family homes would be more compatible with the surrounding community. Mr. Snedegar believes that the proposed townhouses are totally inconsistent and incompatible with the surrounding neighborhood.

Mr. Norman E. Gerber was next called to testify on behalf of the Protestants. Mr. Gerber submitted his curriculum vitae which was accepted into evidence as Protestant's Exhibit 13. Mr. Gerber was accepted as an expert in urban and city planning as well as a land use consultant. Mr. Gerber testified that he has been familiar with this area of Baltimore County for the past 30 years, and in fact, visited the subject site twice over the three weeks prior to this hearing.

Mr. Gerber testified as to the issue of compatibility as that term is dealt with in Section 26-282 of the Baltimore County Code (B.C.C.). He testified that in order to reach the ultimate issue of compatibility, one must first look at the definition of "neighborhood" as provided in Section 26-282, Subsection (c) of the B.C.C. Mr. Gerber next testified as to what he considers to be the neighborhood when applying the definition afforded by the B.C.C. Mr. Gerber submitted as Protestant's Exhibit 15, a zoning map of the Shirleybrook Village community upon which he has highlighted what he believes to be the neighborhood. It is Mr. Gerber's opinion that the Shirleybrook Village community encompasses that area situated within the following boundaries: From I-95 (John F. Kennedy Memorial

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Highway) located to the south, to the newly constructed Perry Hall Boulevard to the northwest, to Gumspring Road and Heidelberg Lane and Ridge Road to the east, and finally, to the stream on the northeast side of Shirleybrook Avenue which runs from the north side of Perry Hall Boulevard down to the JFK (I-95) Highway. As stated previously, this "neighborhood" is depicted on Protestant's Exhibit 15, and outlined by Mr. Gerber in a green magic marker. Mr. Gerber believes that the definition of neighborhood is easily defined by the roadways and the identified stream.

Mr. Gerber further testified that when reviewing the materials submitted to the County by the Developer, he was unable to find where the Developer of this site made any attempt to define neighborhood. Specific reference was made to the letter dated November 10, 1994 from Allan Scoll, Registered Landscape Architect with D. S. Thaler and Associates, Inc., to Baltimore County. Mr. Gerber stated that no where in this letter was there a representation made by the Developer as to what constitutes the Shirleybrook Avenue or the Babikow Road neighborhoods.

Mr. Gerber next addressed the issue of compatibility and the eight objectives as listed in Section 26-282(b) of the B.C.C. Mr. Gerber offered testimony and his expert opinion as to whether the proposed town-house development satisfies those objectives which are listed in Section 26-282(b), 1 through 8. He testified that in his expert opinion, the Developer has failed to satisfy the compatibility objectives listed therein and thus, the Development Plan should be denied on the basis of it being incompatible with the surrounding neighborhood.

Mr. Gerber also testified that he has reviewed the Office of Planning and Zoning case file as to their recommendations on compatibility. He testified that the Planning Office determined in its November 17,



1994 correspondence that the proposed townhouse development is compatible with the surrounding Shirleybrook Village community. It should be noted that the Office of Planning and Zoning determination consists of a one-sentence recommendation. There is no basis, nor are there any factual findings set forth in that November 17, 1994 letter which delineates the reasons for a finding of compatibility. Furthermore, Mr. Gerber testified that the Office of Planning and Zoning has failed to define what they believe constitutes the Shirleybrook Village neighborhood. Mr. Gerber acknowledged that the zoning of this property (D.R. 5.5) permits townhouses to be developed as of right, subject to a finding of compatibility by the Director of Planning and approval by this Hearing Officer. He further stated that the old development plan regulations relative to D.R. 5.5 zoned property permitted townhouses as of right, without a finding of compatibility. However, it was Mr. Gerber's opinion that the Residential Transition Area (RTA) setbacks for townhouses under the old regulations were greater than that which exist today. Therefore, he believes that this property would have been difficult to develop, or quite possibly, could not have been developed with townhouses under the old regulations.

Finally, Mr. Gerber testified that the elevation drawings provided within Petitioner's Exhibit 3, a plan showing the sections and elevations of the proposed townhouse development, do not accurately depict the existing vegetation along Shirleybrook Avenue. It was his opinion that the existing vegetation is not as dense as that depicted on the elevation drawings marked into evidence as Petitioner's Exhibit 3.

On cross-examination, Mr. Gerber admitted that the area which is the subject of this development plan hearing, is contained within the White Marsh Growth Plan. He testified that while he was Director of the

Office of Planning and Zoning, he recommended that this area be set aside as a growth area. Mr. Gerber further stated that he believes the D.R. 5.5 zoning is a proper zoning for this property, but that townhouses are not compatible with the surrounding community. He believes that the D.R. 5.5 zoning would be beneficial to this property in the development of single family homes, in that the setback requirements for homes built in a D.R. 5.5 zone are not as restrictive as other lower zoned classifications. It was clear from his testimony that Mr. Gerber was attacking the proposed development on the issue of compatibility and not on the issue of whether or not it falls within a growth area. His testimony was clear that while this is a growth area, townhouses are not compatible with the surrounding neighborhood.

Finally, the last witness called to testify by Mr. Burgess was Mr. William McNeal. Mr. McNeal testified that he has resided in the Babikow Road community for the past 54 years. His family owns the large parcel of land situated to the north of the proposed development. Mr. McNeal testified that he is concerned about two ponds that currently exist on this property and believes that these two ponds should be fenced in to prevent young children from playing in the water contained therein. Furthermore, he believes a fenced buffer should be provided along the common boundary line of the Shirleybrook Village development and the McNeal property to provide a buffer and an element of privacy for the McNeal home.

At the close of the testimony offered by the Protestants, Mr. Burgess renewed his Motions to Dismiss as previously discussed. All Motions raised by Mr. Burgess at this stage of the hearing were denied. Furthermore, Mr. Bronstein on behalf of the Developer, renewed his Motion

that the Development Plan as submitted should be approved at this time. That Motion, too, was denied.

The Developer was then given an opportunity to present testimony and evidence to address the issues raised by the witnesses who testified on behalf of the Protestants. The Developer first called Mr. Wayne Feuerborn, a representative of the Office of Planning and Zoning (OPZ), to testify. Mr. Feuerborn is employed as a Growth Area Coordinator in that office and has been designated by the Director of Planning to testify for that agency. Mr. Feuerborn has a Master's Degree in Architecture and City Planning and has been employed by Baltimore County for the past 4 years. Mr. Feuerborn testified that he is familiar with the subject property and has visited the site on several occasions. He testified that he has also reviewed the documents pertaining to the proposed development of Shirleybrook Village. Mr. Feuerborn testified that this particular property has been designated as a growth area as opposed to an in-fill area. He stated that his office has determined that the Shirleybrook Village development is compatible with the surrounding neighborhood and is making that recommendation to this Hearing Officer.

He next testified as to what his Office considers to be the Shirleybrook neighborhood. Mr. Feuerborn testified that his Office has developed several definitions of what they perceive to be a neighborhood in the Shirleybrook Avenue area. The first definition of neighborhood identified by Mr. Feuerborn was based upon the growth management boundaries which are bordered by I-695 (the Baltimore Beltway), and run to Gunpowder Falls, was further bordered by Pulaski Highway to the east, and Belair Road to the west. This is the first definition of neighborhood

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that the Office of Planning and Zoning looked at when considering the issue of compatibility.

Mr. Feuerborn next identified a second, more restrictive definition of neighborhood that his office considered. In this definition of neighborhood, Mr. Feuerborn considered Silver Spring Road as a boundary to the north and east of the subject site, and Rossville Boulevard to the south and west. Furthermore, Mr. Feuerborn testified that the other boundaries to this neighborhood would be Franklin Square Drive and Perry Hall Boulevard. He further indicated that he did not believe that I-95 (the JFK Highway) was a boundary to this neighborhood. His Office believes that the definition of neighborhood crosses over I-95 and includes one townhouse development, known as Castlestone, located on the east side of I-95, and that they consider that development to be within this neighborhood.

Applying these two definitions of what the Office of Planning and Zoning considers to be the neighborhood surrounding Shirleybrook Village, they have reached the conclusion that the Shirleybrook development is compatible with the surrounding neighborhood. Mr. Feuerborn testified that his Office did not concentrate on any one particular objective of the compatibility findings listed in Section 26-282(b) of the B.C.C., but considered all eight objectives together and the cumulative effect they may have on a finding of compatibility. Mr. Feuerborn next testified as to how, in his opinion, the proposed townhouse development satisfies the compatibility objectives listed within the B.C.C. Mr. Feuerborn asserted that he believes this townhouse development is compatible with the surrounding neighborhood, utilizing the definitions offered by the Office of Planning and Zoning.

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Furthermore, Mr. Feuerborn testified that OPZ supports the variances and waivers of standards requested by the Developer for this project. He testified that in his opinion the tremendous amount of open space provided by the Developer on this site more than adequately offsets the variances being requested and that this Development Plan is a good plan overall.

On cross-examination, Mr. Feuerborn was questioned as to his Office's interpretation of what comprises the Shirleybrook neighborhood. Mr. Feuerborn testified that their finding of compatibility, based upon their definition of neighborhood, consisted of a one-line recommendation to this Hearing Officer as noted earlier in this Opinion. He testified that his Office purposely presented their recommendation in a one-line form so that it would not seem as though that Office was taking sides with either the Developer or the community on this issue. That was the purpose of providing a very brief conclusory statement on the recommendation of compatibility.

Furthermore, on cross-examination, Mr. Feuerborn was asked whether the elevation "B-B" as depicted on Developer's Exhibit 3, the sections and elevations drawing of the Shirleybrook Village development, was representative of what actually exists in the field. Mr. Feuerborn agreed that the representation made on Developer's Exhibit 3 is consistent with what exists in the field. Mr. Feuerborn then testified concerning the compatibility objectives provided in the B.C.C. and based on his review of these objectives, he believes this development to be compatible with the surrounding neighborhood.

The Developer next called to testify Mr. Wes Guckert, who was accepted as an expert traffic engineering witness. Mr. Guckert testified

that he is familiar with the subject site and that his firm conducted a traffic study of Babikow Road. He testified that his study revealed that at the present time, approximately 3400 vehicles utilize Babikow Road per day. He estimated that the proposed development will create an additional 800 Average Daily Trips (ADT) along Babikow Road, which would bring the ADT for Babikow Road to 4200. Mr. Guckert testified that he believes Babikow Road has the capacity to handle between 10,000 and 12,000 vehicles per day, and therefore, in his opinion, the proposed development of Shirleybrook Village would not have an adverse effect on traffic conditions on Babikow Road.

Mr. Guckert also testified as to the sight distances provided by the Developer from the entrance to the Shirleybrook subdivision. He testified that all sight distances shown on the plan satisfy County requirements and standards. Given this, he believes that there will be no adverse sight distance problems created by the development of Shirleybrook Village.

On cross-examination, Mr. Guckert testified as to the width of Babikow Road and indicated that he did not measure the width of Babikow Road at the point where streams pass underneath through two culverts.

Next called to testify on behalf of the Developer was Mr. David S. Thaler, the principal in the firm of D. S. Thaler and Associates, Inc. Mr. Thaler was accepted as an expert in civil engineering, surveying and land planning. Mr. Thaler testified concerning the development plan prepared by his firm. He further testified that his office performed a fire flow test at the fire hydrant located on the Buontempo property. The results of this fire flow test were entered into evidence as Developer's Exhibit 26. The test found that the fire hydrant at this location exceeds

County standards as to the required flow of water at this hydrant. Mr. Thaler further testified that the Developer of this site proposes to provide a water line to residents of Shirleybrook Avenue. Apparently, the water pressure along this route is not as strong as the residents would like it to be. The Developer proposes to provide a fresh water line through what is depicted as "Road D" on the Development Plan. This water line would tie into the existing water line in Shirleybrook Avenue. This would benefit the residents of Shirleybrook Avenue. Furthermore, this water line would be installed at the Developer's expense.

Mr. Thaler also testified as to the 20-foot strip of land that runs from Babikow Road and borders the McNeal property down to the Shirleybrook Village development. Mr. Thaler testified that the boundary survey prepared by his firm shows this to be a fee-simple strip of land owned by the Developer. Mr. Thaler next testified concerning the Nottingham property which borders the subject site and is located between the proposed development and I-95. Mr. Thaler testified that in his opinion, this property has a very large flood plain, riparian forest and streams which traverse it and consequently restrict any development activity that might take place thereon. His basic finding concerning the Nottingham property is that it is undevelopable.

Mr. Thaler also offered testimony concerning Babikow Road. He testified that Babikow Road is planned to be improved as a 40-foot paved roadway on a 60-foot right-of-way. He testified that these improvements are not in the County budget at this time, but will ultimately be included at some future date. Mr. Thaler also testified concerning the variances requested by this Developer, pursuant to companion Case No. 95-148-A. As stated previously, this matter came before me as a combined Hearing Offi-

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cer's Hearing for development plan approval and a Petition for Variance wherein I am asked to rule upon those variance requests as Deputy Zoning Commissioner for Baltimore County.

Mr. Thaler testified concerning the variances being requested. He identified those variances on the site plan and offered testimony as to the necessity of same. Mr. Thaler also testified regarding the modification to the RTA requirements that apply to this property as well as the variance requested for the community identification sign to be located at the entrance to Shirleybrook Village. Mr. Thaler also testified concerning the waivers from Department of Public Works' standards that have been requested by this Developer, all of which have been approved by that agency.

Mr. Thaler testified that the variances that are being requested satisfy the requirements of Section 307.1 of the B.C.Z.R. He believes that the subject property qualifies as a unique parcel of land, considering its shape and environmental characteristics.

Mr. Thaler also testified concerning Mr. McNeal's request to fence the two ponds on this property. Mr. Thaler agreed with this suggestion and believes that the Developer should fence the ponds that exist on their property. Furthermore, he believes that screening along the common boundary line shared with the McNeal property is appropriate and suggested that the Developer would comply with this request. However, Mr. Thaler believes that only that area where townhouses will be located need be fenced and screened from the McNeal property.

Mr. Thaler further testified concerning other aspects contained on the development plan submitted into evidence. He also offered testimony concerning the 400-foot sight distance which traverses the Buontempo prop-

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erty. Mr Thaler testified concerning the blocking of this sight line by any landscaping done on the Buontempo property. He testified that in his opinion, since any blockage of the sight line on the Buontempo property would occur at a great distance from the entrance to the proposed development, it would have minimal impact upon a person exiting the Shirleybrook subdivision onto Babikow Road. That is, the further along the site distance line that a blockage occurs, the less impact it will have on the ability of a motorist to exit the Shirleybrook Village development. Therefore, he believes that any blockage that may occur on the Buontempo property will have minimal effect on the visibility at the entrance to the proposed development.

The next topic discussed by Mr. Thaler in his testimony involves some alternative road designs for the entrance road to the Shirleybrook Village development. Mr. Thaler submitted into evidence as Developer's Exhibit 32, an alternative road design for "Road A", which shows the entrance to this subdivision connecting with Babikow Road at different locations. These alternative road designs are being shown for the purpose of providing a different sight line along Babikow Road. Mr. Thaler testified that in the event this Hearing Officer did not like the alignment of Road A where it intersects Babikow Road, one of the other entrance roads could be selected to provide a better sight line along Babikow Road. Mr. Thaler testified that the road entrance shown on the Development Plan is the most environmentally sensitive road entrance that could be designed by this Developer. That is the reason why this entrance road was chosen over the others provided on the alternative road design plan marked as Developer's Exhibit 32.

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Mr. Thaler also offered testimony regarding the public school system applicable to the Shirleybrook Village development. He testified that this Development is located in the Fullerton Elementary School district and that at the present time, the actual September 1994 enrollment statistics show that Fullerton Elementary School is 59 students under capacity. Therefore, the number of additional students who might attend Fullerton Elementary School is not an issue at this time.

Mr. Thaler next testified as to the RTA setback requirements that were applicable to D.R. 5.5 zoned property prior to the change in legislation in 1992. Mr. Thaler disagreed with Mr. Gerber's previous testimony and stated that RTA setback requirements would have simply required the townhouses to be oriented in a different fashion. His summary testimony was that this site could have been developed with as many townhouses as are proposed today under the old development regulations.

Mr. Thaler also offered testimony on Mr. Snedegar's plan which proposed single family building lots for the subject site. He testified that Mr. Snedegar's plan was actually distorted in its size, given the fact that it was copied on a xerox machine. He testified that making copies in this fashion distorts the actual size of the property by as much as 7%. Furthermore, he testified that the Snedegar plan failed to comply with the forest buffer regulations, its effects on various grades on the property, various vistas that apply to this property, riparian forests, afforestation, open space requirements, and buffering requirements that are applicable to this site. Thus, Mr. Thaler believes that Mr. Snedegar's plan is not an accurate representation of what could be situated on this property in the line of single family dwellings. Mr. Thaler concluded his

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testimony and the Developer offered no other witnesses to support the plan and variances being requested.

One additional witness was offered by Mr. Burgess. Mr. William C. McNeal, who previously testified, forgot to mention an issue that he wished to address. Mr. McNeal took the stand and testified that he and his family are concerned about the vista provided his family's property when overlooking the Shirleybrook Village development. He testified that the vista which his family has enjoyed for many years, will be substantially and adversely impacted by virtue of the proposed development. He asked that townhouses not be approved and that the vista he presently enjoys be maintained.

At the close of Mr. McNeal's testimony, neither the Protestants nor the Developer wished to offer any additional testimony. Closing arguments were then afforded Mr. Burgess and Mr. Bronstein as well as the opportunity to submit memoranda to this Hearing Officer which were due to be presented to me on or before January 18, 1995.

#### ISSUES PRESENTED

As stated previously, the members of the community, by and through their attorney, Douglas Burgess, identified 13 separate issues relative to the proposed development plan. Some of those issues generated a minimum amount of testimony in support thereof. Those issues will be dealt with at this time, reserving the other issues that generated the most amount of testimony for the latter part of this decision.

#### Issue 1. School Districts

One of the issues identified by the Protestants was what, if any, effect this proposed townhouse development would have on the school district applicable to this area of Baltimore County.

As noted earlier, Mr. Thaler testified that the school district applicable to this site is the Fullerton Elementary School District. He testified that Fullerton Elementary School is operating under capacity at the present time. Given this fact, and the fact that there were no other substantial reasons offered by the Protestants as to any adverse consequences which might be suffered by this school district as a result of the proposed development, I find there was insufficient evidence concerning this issue to warrant a denial of the development plan. Therefore, this issue will be resolved in favor of the Developer in that there is no justification for denying this development plan on this issue.

Issue 2. Water Pressure

Another issue identified by the community was the effect this development will have upon the existing water pressure conditions in the surrounding community. Testimony relative to water pressure was offered on behalf of the Developer by Mr. Thaler, who stated that a fire flow test was performed on the fire hydrant located at the Buontempo property. This test, which was entered into evidence as Developer's Exhibit 26, showed that the flow of water at that fire hydrant exceeds the standards established by Baltimore County. Furthermore, Mr. Thaler testified that the Developer will install, at his own expense, an additional fresh water line in Road D which will be tied into the existing water line in Shirleybrook Avenue. This water line will increase the water pressure for those residents along Shirleybrook Avenue and as such, will be a benefit to the community in lieu of a detriment. Therefore, there was no evidence offered before this Hearing Officer which would justify a denial of this development plan on the basis of any adverse effects this development might have on the water pressure in the surrounding community.

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### Issue 3. Police, Fire and Emergency Medical Services

Another issue raised by the community was the inadequacy at the present time of police, fire and emergency medical services to the Babikow Road community. There was some general testimony offered that police protection in this area was inadequate at this time. However, there was no specific information as to any adverse consequences which might be suffered by the Babikow Road community by virtue of the proposed development. Furthermore, the Fire Department has had the opportunity to comment on the proposed development and any effects they feel it will have on fire safety. The Fire Department recommended approval of the plan as set forth on Developer's Exhibit 7. Given the limited testimony offered by the Protestants concerning this issue, there was insufficient evidence to justify a denial of the development plan on that basis.

### Issue 4. Streams

The community also identified as an issue the adverse effects this development might have upon streams which run through this property. Again, there was limited testimony offered by the Protestants as to any environmental effects which might be suffered by these streams as a result of the proposed development. There was testimony that streams do exist on this property; however, there was no expert or lay testimony offered to prove that there would be any adverse environmental consequences resulting upon these streams. Furthermore, the effect of this development upon these streams falls under the purview of the Department of Environmental Protection and Resource Management (DEPRM). After DEPRM reviewed this plan and considered its effects upon existing streams in the area, that agency was satisfied that there would be no adverse environmental consequences to those streams and recommended approval of the development plan. Therefore,

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I believe there was insufficient testimony offered by the Protestants in this regard to justify a denial of the development plan based on the issue of adverse environmental consequences upon streams in the area.

Issue 5. Ponds On-site and Fencing

During the course of testimony offered by Mr. William McNeal, an issue was raised concerning two ponds which exist on the subject property. Mr. McNeal also requested a privacy fence and a landscape buffer along the common boundary line he shares with the proposed development. As noted earlier in this opinion, it was agreed by all parties that some buffering and fencing is needed. On behalf of the Developer, Mr. Thaler agreed with Mr. McNeal's assessment concerning fencing around the two ponds and the need for some buffering between the two properties and indicated that the Developer would comply with his request to fence the ponds and to provide screening and fencing between the McNeal property and Shirleybrook Village. Therefore, this matter having been resolved, there was no need to deny the development plan based on this issue.

Issue 6. Director of OPZ's Recommendation of Compatibility

The community also raised at the outset of the hearing an issue over the "one-line" finding of compatibility made by the Director of OPZ. At issue was the fact that the Director failed to supply necessary information to support his conclusion that the subject development is compatible with the surrounding neighborhood. The community objected to the Director's "one-line" finding of compatibility and argued that the finding should have been supported by competent evidence. I find that it is within the discretion of the Director of OPZ to make his recommendation of compatibility as he sees fit. If he chooses to make a one-line recommendation, that is his prerogative. I do not require, nor do I believe, the

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regulations mandate that the Director provide any additional information to support his recommendation. This does, however, leave the Director's recommendation open to attack during the hearing before me. The fact that the recommendation made by the Director was unsupported by factual findings goes to the weight that I give to his recommendation as opposed to the fact that it was improperly given. Furthermore, the conclusory statement that the Shirleybrook Village development is compatible with the surrounding neighborhood was further bolstered by the testimony of Mr. Feuerborn, who testified on behalf of OPZ. Therefore, I believe that there is insufficient evidence to justify a denial of this development plan on the basis that the Director of OPZ issued a one-line recommendation as opposed to an in-depth explanation concerning his recommendation of compatibility.

Issue 7. Lack of Landscaping

The community next identified an issue concerning the lack of landscaping along Shirleybrook Avenue. Testimony indicated that in their opinion, the landscaping shown on Developer's Exhibit 3, the sight elevation drawings, is not what exists in the field. The Protestants believe that the elevation drawings show more landscaping than what actually exists. The Protestants testified that the existing landscaping is insufficient to screen the proposed development from their view. While this is a legitimate area of concern raised by the residents of Shirleybrook Avenue, it is insufficient to deny the development plan on this basis. It may very well generate a restriction at the end of this Order that would require additional plantings and landscaping along that portion of the Developer's property along Shirleybrook Avenue. Additional landscaping would help to buffer the visual effect the proposed development will have upon the residents of Shirleybrook Avneue. However, as stated previously, the

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lack of landscaping in this area is insufficient to justify a complete denial of the development plan.

Issue 8. Master Plan Conflict

Another issue raised by the community was that this project conflicts with the Master Plan for Baltimore County. The Protestants argued that the proposed development conflicts with the Master Plan and that the development plan should be referred to the Planning Board as a result of this conflict. They also argued that the plan should be denied as a result of its conflict with the Master Plan. After considering the testimony and evidence offered by the representatives of the community, I was not persuaded that the proposed development conflicts with the Master Plan. Therefore, I do not believe that the development plan should be referred to the Planning Board for their consideration. As such, I do not believe that this issue warrants a denial of the development plan.

Issue 9. Townhomes Contrary to Underlying Zoning

The Protestants also raised an issue that the proposed townhouses are contrary to the underlying zoning that applies to this property. Testimony and evidence offered established that the subject property is zoned D.R. 5.5. The Baltimore County Zoning Regulations (B.C.Z.R.), Section 1B01.1A.1.C, at Page 1B-3, specifically provides that group houses are permitted as of right in the D.R. 5.5 zones, subject to a finding of compatibility by this Hearing Officer. The definition of "group house" found on Page 1-18 of the B.C.Z.R. includes "townhouse, apartment buildings", which is exactly what the Developer proposes to construct on this property. Therefore, given the fact that group houses, or townhouses, are specifically provided for in a D.R. 5.5 zone, the Protestants argument that this development is contrary to the underlying zoning of this proper-

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ty fails. Therefore, this issue does not substantiate a denial of this development plan.

Issues 10 and 11. "Domino" Effect

The community next identified two issues that are inter-related. The community raised an issue that in the event this property were to be developed with group houses, that this would cause other properties in this neighborhood to be developed with similar group houses. They feared the "domino" effect that approval of this development would have on other properties in their neighborhood. They also feel that development of this property with townhouses will result in the Nottingham property, which is located between this site and I-95, to be developed similarly. Both of these issues relate to the "domino" effect. The fear enunciated by the Protestants as to a possible domino effect is unwarranted. Each and every parcel which is the subject of a proposed development plan is evaluated on its own merits. Each property has its own peculiarities, given its topography, environmental constraints, shape, existence of trees and forests, and other similar characteristics which would affect its development. Whatever type of development that would take place on the subject site would have no bearing on any other undeveloped parcel of land within this neighborhood. Those other parcels of property have their own unique and peculiar characteristics. Each parcel is reviewed on its own merits to determine whether it is an appropriate candidate for development.

There is some merit to this domino argument in that it could possibly have an effect on the issue of compatibility of future parcels of land. The objectives provided for in Section 26-282(b) mandate that the Hearing Officer look at other houses and developments in the neighborhood to determine whether a particular proposed development is compatible.

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This "domino" argument goes to the issue of compatibility which this Hearing Officer believes to be the ultimate and controlling issue in this particular case. Therefore, my decision on that issue will be reserved when the issue of compatibility is considered later in this opinion. However, the issue raised by the community as to this domino theory is insufficient to warrant a denial of this development plan at this time.

Issue 12. Compatibility

There remain two issues identified by the Protestants at the beginning of the hearing which I believe are the ultimate issues and have generated the most amount of testimony at the hearing before me. As stated previously, the ultimate issue in the eyes of this Hearing Officer concerning this development plan is that of compatibility.

The Developer, asserting the position of the Office of Planning and Zoning, argued that the proposed townhouse development is compatible with the surrounding neighborhood. Mr. Burgess, arguing on behalf of the Protestants, asserted that the townhouses are incompatible with the surrounding neighborhood. Before reaching the ultimate conclusion of compatibility, it is first necessary for this Hearing Officer to make a factual finding as to what I believe to be the neighborhood surrounding the proposed development.

The Baltimore County Code, specifically, Section 26-282(c) provides this Hearing Officer with the definition of neighborhood. Therein, it states that:

"Neighborhood means, for the purpose of a compatibility finding, the existing buildings and land uses adjacent to and extending from the proposed development to a definable boundary such as a primary collector or arterial road, a significant change in character or land use, or a major natural feature."

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Both the Developer and the Protestants offered testimony as to what they believe the definition of "neighborhood" to be. Mr. Feuerborn testified on behalf of the Office of Planning and Zoning as to what the Planning Office believes to be the neighborhood surrounding the proposed Shirleybrook Village development. His testimony was previously reviewed earlier in this opinion. Also testifying on behalf of the Protestants was Mr. Norman Gerber, who gave what he believed to be the area defined as neighborhood surrounding Shirleybrook Village. I do not entirely agree with either of these two witnesses as to their characterization of the neighborhood surrounding the proposed development. Therefore, I believe it necessary to make my own factual finding as to what characterizes the Shirleybrook Village neighborhood, utilizing the definition afforded me by the Baltimore County Code.

When attempting to determine the boundaries of the Shirleybrook Village neighborhood, it is most helpful to utilize the context map which was entered into evidence as Developer's Exhibit 8. This context map shows the major roads and highways and other significant land features and land uses that border and define the Shirleybrook Village neighborhood.

Probably the most easily identifiable boundary to the proposed development is situated a short distance south of this site. That easily definable boundary would be the John F. Kennedy Memorial Highway (I-95). This highway is a clear example of what the County Council had in mind when they chose to set forth the definition of the boundaries of a neighborhood, pursuant to Section 26-282(c). I believe this highway constitutes the southern boundary of the Shirleybrook Village neighborhood.

I cannot understand how the Office of Planning and Zoning made a determination that the Shirleybrook Village neighborhood extended to the

southeastern side of I-95. Mr. Feuerborn's testimony asserted that their definition of neighborhood included the area to the south and east of I-95 which encompasses the townhouse development known as Castlestone. The Planning Office completely disregarded I-95 as a border to this neighborhood, which I believe flies in the face of the clear and concise wording found in the definition of "neighborhood" in Section 26-282(c). For this reason, I reject the Office of Planning's consideration of the development of Castlestone as a basis for their finding of compatibility. This does not mean that their recommendation of compatibility fails entirely because the Planning Office also utilized the townhouse development known as Southfield as a comparable townhouse development to Shirleybrook Village. Given the finding that I-95 is a boundary to this neighborhood, I believe the Planning Office erroneously considered Castlestone in their compatibility finding.

The next most easily identifiable boundary to the Shirleybrook Village neighborhood would be located in a northerly direction from this development, that boundary being Perry Hall Boulevard. I agree with the assessment made by Mr. Burgess on Page 6 of his Memorandum that Perry Hall Boulevard should be considered an "arterial street" in that it was built for the purpose of leading traffic into the White Marsh Towncenter, which is consistent with the definition of "arterial street" found in the B.C.C. Therefore, in my opinion, Perry Hall Boulevard, which is situated to the north of the proposed development and runs, for the most part, parallel to the JFK Highway (I-95), constitutes the northern boundary of the Shirleybrook Village neighborhood.

Looking next in a westerly direction from the proposed development, I find the next prominent boundary to be that of Rossville Boule-

vard, after it crosses the JFK Highway (I-95). Rossville Boulevard runs down and connects with Gumspring Road, which is not specifically labeled on Developer's Exhibit 8, the context map. It is shown as a road on the context map, but lacks identification as Gumspring Road. Gumspring Road runs in a northerly direction and turns into Heidleberg Lane which then connects to the previously identified boundary of Perry Hall Boulevard. Again, Heidleberg Lane is not identified on Developer's Exhibit 8. That is, the road is shown, but it is not identified as Heidleberg Lane. Reference is made to Protestant's Exhibit 15, the zoning map used by Mr. Gerber in his definition of neighborhood for the names of Gumspring Road and Heidleberg Lane. I find that these three roads constitute the third and westernmost boundary line of the Shirleybrook Village neighborhood.

Looking next in a northeasterly direction from Shirleybrook Village, one can ascertain the last remaining boundary to this neighborhood. Mr. Gerber argued that the stream depicted on the context map (Developer's Exhibit 8), just northeast of Shirleybrook Road, constitutes the fourth boundary to this neighborhood. I disagree with Mr. Gerber and find that the stream is not a significant feature to constitute an effective boundary line to this neighborhood. I believe the northeasternmost boundary to this neighborhood is more complicated. I find the last remaining boundary to this neighborhood to be that area running along the Shirleybrook Village side of Corporate Drive as that road is depicted on Developer's Exhibit 8. It is clear, and the testimony confirmed, that Corporate Drive has not yet been improved to the manner depicted on the context map. However, what is clear is the change in land use that occurs in the area of Corporate Drive. The definition afforded me, pursuant to Section 26-282(c) allows a boundary to be defined by a "significant change in character or land use." This

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area along Corporate Drive, which is zoned M.L., has been set aside for use in conjunction with the White Marsh Mall as the White Marsh business community. Some of this area has already been developed with large office buildings, the White Marsh Branch Library, and a few restaurants. This major change in zoning from D.R. 5.5 to M.L. and O-1 clearly shows a significant change in character or land use so as to justify the fourth and remaining boundary to the Shirleybrook Village neighborhood.

Therefore, in summation I find that the neighborhood surrounding the proposed development to be that area located within the following parameters: The JFK Highway (I-95) situated to the south, Rossville Boulevard connecting with Gumspring Road and Heidleberg Lane to the south and west, Perry Hall Boulevard which intersects with Heidleberg Lane and is situated to the north of this site, and finally, the proposed Corporate Drive and the significant change in character or land use found to be located north and east of this site. I hereby find that all that area contained within these parameters constitutes the Shirleybrook Village neighborhood utilizing the plain application of the definition of neighborhood found in Section 26-282(c) of the B.C.C.

Utilizing and applying this definition, I find that the Office of Planning and Zoning was clearly erroneous in their recommendation of compatibility to this Hearing Officer. The Planning Office considered the Castlestone townhouse development and the Southfield townhouse community in their recommendation that the proposed Shirleybrook Village is compatible, pursuant to Section 26-282 of the B.C.C. That Section concerning compatibility mandates that this Hearing Officer utilize only those houses and structures that are located within the Shirleybrook Village neighborhood when making a determination of compatibility. Given the fact that

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the Planning Office utilized two townhouse developments that are outside the Shirleybrook neighborhood, as I defined same above, the Office of Planning's recommendation of compatibility is without merit.

Having defined the area which I believe to be the Shirleybrook Village neighborhood, it is incumbent upon me to next determine whether the proposed Shirleybrook Village is, in fact, compatible, utilizing the compatibility objectives provided for in Section 26-282(b) of the B.C.C.

As stated previously, the B.C.Z.R. mandate that development of group homes or townhouses in a D.R. 5.5 zone is subject to a finding of compatibility by this Hearing Officer. Section 26-282 of the B.C.C. requires the Director of Planning to make a compatibility recommendation to this Hearing Officer. For the reasons stated above, I have found their recommendation to be without merit. However, this recommendation is only advisory in nature and not binding on this Hearing Officer. It is incumbent upon me to make my own determination as to compatibility, utilizing the objectives provided to me by the County Council as set forth in Section 26-282(b) of the B.C.C. The compatibility objectives provided therein are as follows:

"1) The arrangement and orientation of the proposed buildings and site improvements are patterned in a similar manner to those in the neighborhood;

2) The building and parking lot layouts reinforce existing building and streetscape patterns and assure that the placement of buildings and parking lots have no adverse impact on the neighborhood;

3) The proposed streets are connected with the existing neighborhood road network where ever possible and the proposed sidewalks are located to support the functional patterns of the neighborhood;

4) The open spaces of the proposed development reinforce the open space patterns of the neighborhood in form and siting and complement existing open space systems;

5) Locally significant features of the site such as distinctive buildings or vistas are integrated into the site design;

6) The proposed landscape design complements the neighborhood's landscape patterns and reinforces its functional qualities;

7) The exterior signs, site lighting and accessory structures support a uniform architectural theme and present a harmonious visual relationship with the surrounding neighborhood;

8) The scale, proportions, massing and detailing of the proposed buildings are in proportion to those existing in the neighborhood."

These eight compatibility objectives are the only guidance provided to me by the County Council. No where else in the B.C.C. am I afforded a specific definition of compatibility. However, Webster's Third New International Dictionary defines compatibility as "The quality or state of being compatible" and compatible as "capable of existing together without discord or disharmony".

In carefully considering the testimony and evidence, the video tape, the many photographs of the neighborhood, the Memoranda submitted by both parties, and my personal visits to this site, I have come to the conclusion that the proposed townhouse development of Shirleybrook Village does not satisfy the compatibility objectives enunciated in Section 26-282(b) of the B.C.C. I therefore find that the proposed subdivision is incompatible with the surrounding Shirleybrook neighborhood and must therefore be denied.

In judging this ultimate issue of compatibility, one might be tempted to stop at that conclusory finding. However, I believe I owe it to this Developer as well as to the many residents who appeared throughout the four days of testimony in this case, to make specific findings relative to the eight compatibility objectives enunciated in Section 26-282(b).



Not only will this afford an explanation to all interested parties as to how I arrived at my finding, it will also help substantiate the record in the event an appeal is taken from this decision.

Looking at the manner in which the compatibility objectives are set forth in the B.C.C. under Section 26-282(b), I do not believe that the Developer has the burden to satisfy each and every compatibility objective listed therein. All eight compatibility objectives should be considered as a whole when reaching the ultimate decision on compatibility. The manner in which these objectives were drafted does not mandate that each objective be satisfied in favor of compatibility. Again, I believe that all of the objectives must be considered together when rendering a final decision on compatibility.

Compatibility Objective No. 1 requires that the arrangement and orientation of the proposed townhouse buildings and site improvements be patterned in a similar manner to those in the neighborhood. I find that the development plan fails to satisfy this objective. The members of the community who testified did an excellent job in attempting to familiarize this Hearing Officer with the existing homes located within the Shirleybrook Village neighborhood, as previously defined by this Hearing Officer. The citizens presented numerous photographs of the single family dwellings which exist in the Shirleybrook Village neighborhood and also provided a video tape of those homes existing along Babikow Road. Furthermore, this Hearing Officer is well-acquainted with this neighborhood, having been familiar with this area of Baltimore County for over 15 years and given the fact that several site visits were made to this property. I am extremely familiar with the type, arrangement and orientation of the houses in this neighborhood, and find that the proposed Shirleybrook Village townhouses

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are not patterned in a similar manner to the existing homes in this neighborhood. No where in the entire neighborhood, as I defined same earlier in this Opinion, can one find a similar arrangement and orientation as the clustered townhouse buildings proposed within the subject development.

The second compatibility objective requires that the building and parking lot layouts found in the proposed development reinforce existing building and streetscape patterns and assure that the placement of these buildings and parking lots within the subdivision will have no adverse impact on the neighborhood. Again, I find that the development plan fails to satisfy this objective and find that the parking lot layouts and the building layouts contained within the proposed development do not reinforce existing building and streetscape patterns found within the Shirleybrook Village neighborhood. The space between these townhouse buildings is less than that provided between other building patterns in this neighborhood. Furthermore, the parking lot layouts do not reinforce the single family parking patterns found in this neighborhood.

The third objective requires that the proposed streets connect with existing neighborhood road network where ever possible, and the proposed sidewalks be located to support the functional patterns of the neighborhood. I believe the Developer has properly connected the proposed road leading into the Shirleybrook Village development with the existing neighborhood road network. However, I find that the proposed sidewalks do not support the functional patterns of the Shirleybrook neighborhood in that there are no sidewalks along Babikow Road or Shirleybrook Avenue which are the roads immediately adjacent to the proposed development. Therefore, this development plan does not propose sidewalks in this subdivision that

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support the functional patterns in the existing neighborhood in that no other sidewalks are connected to this subdivision.

Compatibility Objective No. 4 deals with open space. It requires that open spaces of the proposed development reinforce the open space patterns of the existing neighborhood in form and siting and complement existing open space systems. It should be noted that the Developer has done an excellent job in his utilization of open space in the proposed townhouse development. I have not encountered a townhouse community which has been better designed with open spaces than Shirleybrook Village. I believe the Developer has done an excellent job in designing the open space systems for this development. However, this is not the appropriate location for a townhouse community. The proposed Shirleybrook Village development would fit in nicely on property adjacent to the Southfield Townhouse development or the Castlestone townhouse development located outside this neighborhood. However, in dealing with the specific open spaces of this townhouse development as opposed to the open space surrounding this development in this neighborhood, I find that this development plan has failed to satisfy this compatibility objective. The existing open space systems in this neighborhood are primarily farm land and large single family lots. For example, immediately north of this townhouse development is the McNeal property. The McNeal property is a very attractive parcel of land, large in scope, containing a single family dwelling and some outbuildings. The open space patterns found within the proposed development are not consistent with those found on the McNeal property as well as the Bartenfelter property to the southwest of this site and the Nottingham property to the southeast. Therefore, I find that this development plan fails to satisfy this objective.

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The fifth objective requires that locally significant features of the site, such as vistas, are integrated into the site design. While this Developer has preserved the vista one enjoys when travelling along the entrance road to this development, it failed to consider the vista enjoyed by the McNeal property when looking south therefrom towards I-95. The vista applicable to the McNeal property has been taken away by the proposed development. The Developer proposes three large townhouse buildings abutting the McNeal property which detract from the McNeal vista. Given this fact, the development plan fails to satisfy this objective.

Objective No. 6 requires that the proposed landscape design complement the existing neighborhood landscape patterns and reinforce its functional qualities. The Developer has done a good job landscaping the majority of the proposed development; however, landscaping is somewhat deficient in the area of the McNeal property and the proposed three townhouse buildings adjacent thereto. Furthermore, landscaping is insufficient along Shirleybrook Avenue where there also exist three townhouse buildings. The development plan could be modified to provide additional landscaping that would address this deficiency. Therefore, I believe the Developer could satisfy this objective. However, given the failure to satisfy the other compatibility objections, the plan would still warrant denial.

Compatibility Objective No. 7 deals with accessory structures, site lighting, exterior signs, and their support of a uniform architectural theme. The Developer testified that the covenants and restrictions that would apply to this townhouse development would address architectural uniformity and present a harmonious visual relationship with the surrounding neighborhood. However, those covenants and restrictions had not been drafted at the time of this Hearing Officer's finding. Therefore, I do

not believe it is proper to assume that these covenants and restrictions would satisfy this objective, without having had the opportunity to review same. It is quite possible that the three townhouse buildings which abut Shirleybrook Avenue might contain fences, sheds, and exterior lighting in their rear yards. These accessory structures and lighting would have an impact upon those single family homes located along Shirleybrook Avenue. Therefore, I believe that this objective has not been fully satisfied.

Finally, Compatibility Objective No. 8 requires that the scale, proportion, massing and detailing of the proposed townhouse buildings be in proportion to those existing in the neighborhood. I find that the Developer has failed to satisfy this objective. As my esteemed colleague, Hearing Officer Schmidt stated in his Glyn Garth opinion, "By their very nature, townhouses are a series of connected dwellings which cumulatively form a single block. Such a massing and scale of a building is inconsistent with the existing structures in this neighborhood." As was the case in the Glyn Garth development, the area of the property which is suitable for development in the proposed Shirleybrook Village development forces this Developer to cluster the number of townhouse buildings into a relatively small area. This has caused the Developer to increase the number of permitted townhouses in a building to as many as seven (7) townhouses in one building. Furthermore, this Developer, given the site constraints and the small area suitable for development, has requested that these townhouse buildings be separated a distance of as little as 20 feet apart. Because of this, the Developer has failed to satisfy Compatibility Objective No. 8 which relates to scale, proportion and massing of the proposed buildings. Furthermore, I cannot find within the neighborhood as I previously defined, any other existing residential buildings comparable in

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size, scale, proportion or massing to those which are proposed in the Shirleybrook Village development.

Because of the foregoing reasons and my findings of fact as detailed above, I find that the proposed development fails to satisfy the compatibility objectives contained in Section 26-282 of the B.C.C. Inasmuch as the proposed development is incompatible with the surrounding neighborhood, the development plan for Shirleybrook Village must be denied.

Even though I have found that this development should be denied on the basis of compatibility, I believe it is necessary to address the remaining issues raised by the Protestants and residents of the surrounding community in the event this matter continues onto an appeal.

Issue 13. Traffic and Sight Distance

The last remaining issue raised by the representatives of the community concerned traffic along Babikow Road and other ancillary streets located within this neighborhood and the sight distance at the entrance to this development. Specifically, the Protestants and residents argued that Babikow Road is too narrow to handle the additional traffic which would be generated by the proposed development. Based on the expert testimony provided by Mr. Wes Guckert, I believe that a development the size of that proposed herein and the average daily trips it was projected to generate, would not be of a sufficient amount to require a denial of the development plan. That is, I believe that Babikow Road has the capacity to handle the additional 931 ADTs, as shown on the plan, which would be generated by the proposed development. While I agree that Babikow Road is a narrow road, it functions at this time and would continue to function, even if a development generating an additional 931 ADTs would be built. Therefore, the narrowness of Babikow Road and the additional traffic which would be gener-

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ated is not a sufficient reason to deny this development plan.

The community also raised as an issue the sight distance that is provided by this Developer at the entrance to this development and Babikow Road. The Developer shows a sight distance line of 400 feet from the entrance road in a northerly direction up Babikow Road and crossing over the property owned by Mr. & Mrs. Buontempo. This sight distance line clearly crosses over the property owned by the Buontempos. In fact, I find the open view along this sight line to be obstructed by a small pine tree as well as the automobiles owned by the Buontempos when they are parked in their driveway.

Furthermore, Mrs. Buontempo testified that she and her husband propose additional landscaping on their property which would further obstruct the sight line shown on the development plan. Mrs. Buontempo testified that no one on behalf of the Developer had contacted her as to keeping the sight line distance free and clear of obstructions, or purchasing that property from the Buontempos. She indicated that she has every intention of continuing to utilize her property which would in effect, obstruct the free and clear vision along the 400-foot sight line.

On behalf of the Developer, Mr. Bronstein argued that Section 21-3 of the B.C.C. prohibits the Buontempos from obstructing this 400-foot sight line. Section 21-3 provides that the Traffic Engineer of Baltimore County is authorized and empowered to require the owners of property to trim trees, bushes, vines, etc. that block a driver's view at a street intersection (emphasis added). The key language in this provision of the B.C.C. is that it applies to property located at "street intersections". The Buontempo property is not located, in the opinion of this Hearing Officer, at the street intersection of Babikow Road and the entrance road

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leading into the proposed development. In fact, the Buontempo property is situated some 180 feet away from the intersection of the entrance road and Babikow Road. I find that the Buontempo property is not located "at the intersection" of the entrance road and Babikow Road and that the County's Traffic Engineer would be unable to force the Buontempos to remove or trim any trees or prohibit them from parking their automobiles in their own driveway. Therefore, I believe that the Developer has failed to provide an adequate 400-foot sight line distance and given this, the development plan as submitted for this reason should also be denied.

There were no other issues identified by the community regarding the development plan. All of the issues raised at the hearing have been adequately addressed within the body of this order. As stated previously, the development plan has been denied on the basis of compatibility and the Developer's failure to provide the proper sight line distance of 400 feet at the entrance to this development. Therefore, for these reasons, the development plan shall be denied.

The Developer also requested certain variances, pursuant to the companion Petition for Variance in Case No. 95-148-A. Inasmuch as the development plan for this property has been denied, so to are the requested variances which were contingent upon approval of this development plan. The variances requested by the Developer are being denied as opposed to being dismissed as moot so that the issue of the variances will be properly preserved for appeal before the Board of Appeals, should the Developer choose to pursue this matter. Any appeal to the Board of Appeals concerning the requested variances is a de novo appeal, and inasmuch as I have denied them, those issues will be properly preserved before the Board of Appeals.

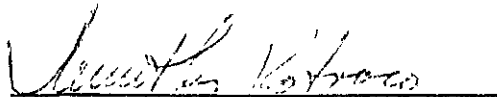


Pursuant to the zoning and development plan regulations of Baltimore County as contained within the B.C.Z.R. and Subtitle 26 of the Baltimore County Code, the advertising of the property and public hearing held thereon, the development plan and Petition for Variance shall be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner and Hearing Officer for Baltimore County this 23<sup>rd</sup> day of January, 1995 that the development plan for Shirleybrook Village, identified herein as Developer's Exhibit 7, be and is hereby DENIED; and,

IT IS FURTHER ORDERED that the Petition for Variance seeking relief from the Baltimore County Zoning Regulations (B.C.Z.R.) and the Comprehensive Manual of Development Policies (C.M.D.P.) as follows: From Section 1B01.2.C.1.c and CMDP IIA, p.19, to permit a side building setback to a public street right-of-way of 15 feet in lieu of the required 25 feet; from Section 504.2 and CMDP IIA, p.21, to permit a maximum of 13 parking spaces not separated by an island or peninsula in lieu of the maximum permitted 10 parking spaces; from Section 301.1.A and 1B01.2.C.1.c to permit a rear property line setback of 18 feet in lieu of the required 22.5 feet for open projections, and to permit accessory structures and fences to be located in Residential Transition Areas (RTA) not subject to the 75-foot setback requirements; and from Section 413.1.E.1 to permit a double-faced community identification sign of 168 sq.ft. in lieu of the maximum permitted 15 sq.ft., in accordance with Developer's Exhibit 7, be and the same is hereby DENIED.

Any appeal of this decision must be taken in accordance with Section 26-209 of the Baltimore County Code.

  
TIMOTHY M. KOTROCO  
Hearing Officer for  
Baltimore County

TMK:bjs

Baltimore County Government  
Zoning Commissioner  
Office of Planning and Zoning



Suite 112 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

January 23, 1995

Benjamin Bronstein, Esquire  
Evans, George and Bronstein  
29 W. Susquehanna Avenue, Suite 205  
Towson, Maryland 21204

RE: DEVELOPMENT PLAN HEARING and PETITION FOR VARIANCE  
SE/S Babikow Road, SW/S Shirleybrook Avenue  
(Shirleybrook Village)  
11th Election District - 6th Councilmanic District  
Jenkins Family Ltd. Part., Owners, and Mr. Sidney Emmer, Developer  
Case No. XIV-338 & 95-148-A

Dear Mr. Bronstein:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Development Plan and Petition for Variance have been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact the Zoning Administration and Development Management office at 887-3391.

Very truly yours,

A handwritten signature in cursive script, reading "Timothy M. Kotroco".

TIMOTHY M. KOTROCO  
Deputy Zoning Commissioner  
for Baltimore County

TMK:bjs

cc: Mr. David S. Thaler, D. S. Thaler & Associates, Inc.  
7115 Ambassador Rd., Baltimore, Md. 21244

Douglas Burgess, Esquire, Nolan, Plumbhoff & Williams  
210 W. Pennsylvania Avenue, Suite 700 Towson, Md. 21204

Mr. Joseph Maranto, Project Manager - LADM  
People's Counsel; DPW; DEPRM; Case File

MICROFILMED



17 12 08  
SHIRLEYBROOK VILLAGE  
BABIKOW ROAD AND  
SHIRLEYBROOK AVENUE

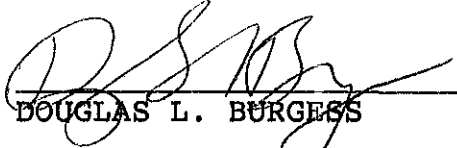
\* BEFORE THE  
\* DEPUTY ZONING COMMISSIONER/  
\* HEARING OFFICER  
\*  
\* OF BALTIMORE COUNTY  
\*  
\* ZADM File No. XIV-338  
\*

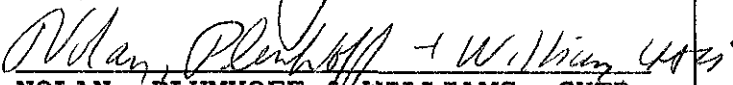
\* \* \* \* \*

ENTRY OF APPEARANCE

Please enter the appearance of Douglas L. Burgess and Nolan, Plumhoff & Williams, Chartered on behalf of the following, as Protestants in the captioned matter:

1. South Perry Hall Blvd.  
Improvement Association, Inc.  
c/o Thomas Seymour  
7719 Babikow Road  
Baltimore, Maryland 21237
2. Bernadine Seymour and Thomas Seymour  
7719 Babikow Road  
Baltimore, Maryland 21237
3. Nancy Tilton and Ken Tilton  
7834 Babikow Road  
Baltimore, Maryland 21237
4. Peggy Winchester and Roland Winchester  
5012 Shirleybrook Avenue  
Baltimore, Maryland 21237

  
DOUGLAS L. BURGESS

  
NOLAN, PLUMHOFF & WILLIAMS, CHTD  
Suite 700, Court Towers  
210 West Pennsylvania Avenue  
Towson, Maryland 21204  
(410) 823-7800

LAW OFFICES  
NOLAN, PLUMHOFF  
& WILLIAMS,  
CHARTERED

8594C DLB/caw

SHIRLEYBROOK VILLAGE  
BABIKOW ROAD AND  
SHIRLEYBROOK AVENUE

\* BEFORE THE  
\* DEPUTY ZONING COMMISSIONER/  
\* HEARING OFFICER  
\* OF BALTIMORE COUNTY  
\* ZADM File No. XIV-338  
\*

\* \* \* \* \*

HEARING MEMORANDUM IN SUPPORT OF  
SOUTH PERRY HALL BLVD. IMPROVEMENT ASSOCIATION'S  
PROTEST OF SHIRLEYBROOK VILLAGE PROJECT

Nolan, Plumhoff & Williams, and Douglas L. Burgess, Esquire, attorneys, offers the following Memorandum for the consideration of the Hearing Officer, on behalf of the South Perry Hall Blvd. Improvement Association, Inc., in this matter, as well as for various individual protestants, to wit, Bernadine Seymour and Thomas Seymour, Nancy Tilton and Ken Tilton, and Peggy Winchester and Roland Winchester.

INTRODUCTION

Nolan, Plumhoff & Williams, Chartered, has been asked to represent a group of Babikow Road neighbors, who are protesting individually and are forming a new improvement association, called the South Perry Hall Blvd. Improvement Association, Inc. The Association has approximately 50 members.

As the Hearing Officer is well aware, there are issues in this project involving at least two (2) major areas, namely:

MAJOR ISSUES

1. The site is identified on the Master Plan and by its base D.R.5.5 zoning for single family use. The Developer's proposal to cluster a maximum number of multi-family townhouses in this irregular site is in conflict with the Master Plan, contrary to the underlying zoning, and inconsistent with the compatibility standards under Section 26-282 of the Baltimore County Code.

2. The second series of issues revolves around a series of variances from certain setback and RTA requirements and Public Works Standard Waivers. There is nothing inherently unique about the site that gives rise to practical difficulty

and unreasonable hardship that would require the need for variances. The only hardship is the Developer's self-created one, which the Court of Appeals has repeatedly said is not grounds for a variance.

#### THE PROPERTY

The subject property, proposed to be developed by Mr. Sidney Emmer, is a 22.3 acre property of very irregular shape, lying between Babikow Road to the north and northwest of White Marsh Mall, and east of King Avenue.

Mr. Emmer is the contract purchaser from the Jenkins Family Limited Partnership. The Jenkins family at one time or their predecessors farmed part of this property.

#### PUBLIC WORKS STANDARD WAIVERS

In addition to the finding of compatibility, and the RTA Variances, and certain setbacks variances, the petitioners are also asking for a waiver of a number of Public Work Standards including: (1) a narrower access road namely 24 feet of paving on a 44 foot right-of-way in lieu of 30 feet of paving on a 50 foot right-of-way; (2) a waiver of sidewalks on one side of the access road, with a sidewalk on one side only; (3) a waiver of the requirement for improvements to Babikow Road to allow dedication of the right-of-way only, a matter of great concern to the residents; (4) to allow a turn around at the end of Road B in lieu of a standard turn around; and (5) to waive public improvements to Road D east of its intersection with Road C, namely a link between this project and Shirleybrook Avenue.

#### LANDMARK FIRST CASE IN AREA

The neighbors in this particular case have never been involved in a major development controversy prior to this project. This is their first time, and they feel that it is extremely important because a large area between King Avenue to the west, Babikow Road to the northwest and north, I-95 to the south, and areas closer to White Marsh Mall to the east, is largely lightly developed, with single family residents and open properties only. Townhouses on this property, and others adjoining it will change the whole character of this single family area.

#### THE MASTER PLAN CONFLICT AND REQUIRED REFERRAL TO THE PLANNING BOARD

The Office of Planning and Zoning (OPZ), comments of May 13, 1994, from acting director Pat Keller to ZADM director

LAW OFFICES  
NOLAN, PLUMHOFF  
& WILLIAMS,  
CHARTERED

Arnold Jablon are most instructive. Baltimore County Master Plan, Proposed Land Use Map calls for single family detached in this area.

As noted at page 2 of these same OPZ comments, the Master Plan calls for single family detached in this area, as does the basic D.R.5.5 zoning. Since the developer is proposing a large multi-family clustered townhouse development, the residents respectfully submit that there is a Master Plan Conflict in this situation. Accordingly, referral of the plan to the Planning Board is required prior to the hearing in this matter. Baltimore County Code Section 26-207(a)(1) states "The hearing officer shall refer the plan to the Planning Board in the following circumstances: (1) the proposed plan conflicts with the mater plan." Accordingly, referral to the Planning Board is required.

#### SECTION 26-282 COMPATIBILITY OBJECTIVES

Townhouse multi-family cluster developments are not compatible on this property or in the area for a number of reasons. As the Hearing Officer is well aware, from other projects, Section 26-282 of the Development Regulations sets out some eight compatibility objectives, which are required to be meet in order for a proposed project to be compatible with a neighborhood. The burden to prove them is on the Petitioner.

#### THE NEIGHBORHOOD

Before going into the objectives in detail, it is first appropriate to define the neighborhood. In Section 26-282(c), neighborhood is defined as follows:

"Neighborhood means, for the purpose of a compatibility finding, the existing buildings and land uses adjacent to and extending from the proposed development to a definable boundary such as a primary collector or arterial road, a significant change in character or land use, or a major natural feature."

The Petitioners believe that the neighborhood consists of the following definable boundaries:

1. To the east, the natural stream lying near the ML zone line along the northwest side of I-95 west of White Marsh Mall;

2. To the north, and northwest, Perry Hall Boulevard;

3. To the west, Ridge Road and King Avenue; and

4. To the southeast, I-95.

The neighbors' concerns center about a number of items, but the primary item is whether this neighborhood is to be converted to a neighborhood of individual homes as called for by the Master Plan and D.R.5.5 zoning, or to a neighborhood of multi-family townhouses no matter how well designed and laid out.

The second major concern is that Babikow Road is only 16 to 20 feet wide with narrow shoulders, and cannot properly accommodate the traffic that it now carries, and will be greatly impacted by this proposed development which will generate at least 931 new trips per day, many of them in the peak hours. If this property goes multi-family townhouse, so will the adjoining Bartenfelder and Nottingham Village, Inc. properties adding even more trips.

The community conducted traffic counts on Babikow Road on the following days:

	<u>7 - 9 a.m.</u>		<u>4 - 6 p.m.</u>	
	<u>South</u>	<u>North</u>	<u>South</u>	<u>North</u>
1. December 15, 1994	372	240	297	360
2. December 16, 1994	383	262	299	358
3. December 20, 1994	284	257	268	319

NOTE: School Bus traffic averaged 3 buses per peak period.

NOTE: Attendance at Essex Community College was lower during the sampling dates than normal due to the holidays.

Site distances along Babikow Road are limited, causing dangerous entry and exits onto Babikow Road, a 30 m.p.h. roadway, which the neighbors have nicknamed a "speedway" because of traffic rushing to get through. A recent car involved in an accident on Babikow Road had skid marks indicating speed in excess of 50 m.p.h. The road is a paved old farm road that follows the natural contours of the land. The road therefore dips and curves significantly through its course.

At the present time, Babikow Road because of its link through a short section of Bucks Schoolhouse Road to Perry Hall Boulevard to the northeast and to King Avenue to the southwest, has become a short cut between White Marsh Mall, White Marsh in general, and Essex and Philadelphia Road and Route 40 to the southwest. At times, some of the neighbors along Babikow Road now sit 10 minutes in their driveway trying to get out in the morning, and Babikow Road was never designed to carry the volume of traffic which it will be asked to carry by this project and other projects which will likely follow.

There are no County plans to improve Babikow Road, nor the adjoining intersections, which are accident prone and bottlenecks, even without the addition of 931 trips per day.

APPROVAL OF THIS PROJECT WILL  
BE A PRECEDENT FOR THIS ENTIRE NEIGHBORHOOD

THE DOMINO EFFECT

If this project is found to be compatible, which the neighbors know it is not, it will be a precedent for numerous other townhouse projects in the area.

A glance at the vicinity map on the Petitioner's Proposed Final Development Plan reveals that this property would set the entire precedent for future development of other undeveloped parcels in the area. This would be contrary to both the Master Plan, and the base D.R.5.5 zoning which prevails in this defined neighborhood.

It would also likely lead to townhouses on the Nottingham Property against I-95, at the end of Shirleybrook Avenue, adjoining this site.

During the Vietnam War, we were repeatedly warned about a so-called "domino effect," and this property if developed into townhouses will have precisely that effect, and will greatly alter the character and nature of this neighborhood, which is presently suffering from traffic and other problems.

THE FAILURE TO MEET THE COMPATIBILITY OBJECTIVES

ARRANGEMENT AND ORIENTATION OF  
PROPOSED BUILDINGS ARE INCOMPATIBLE

SECTION 26-282(b)(1)

Despite the statement in the Thaler letter of November 10, 1994, that since the proposed development falls "within an



area largely undeveloped, the objective is generally not applicable," the exact opposite is true. For the reasons outlined immediately above, this townhouse project, no matter how well designed internally, which we do not concede, cannot be compatible with the single family detached nature of the area, called for by both the Master Plan, and the base D.R.5.5 zoning.

If approved, it would, and could also lead to townhouse development on the forty acre Bartenfelder Property to the south, as well the Nottingham Village, Inc. property immediately to the south.

The acreage of the Nottingham Village property to the south is unspecified on the plan, but is obviously very large, and would completely alter the character of the neighborhood, if it too were developed for townhouses. Furthermore, the only seeming link to Nottingham Village, Inc. Property to the south would be Shirleybrook Avenue, which is presently a narrow dead end road, with approximately nine (9) houses along it. Shirleybrook Avenue would then become the main entrance for the Nottingham Village, Inc. property. The future possible extension of Shirleybrook into Nottingham would result in a 25 foot taking out of the front yards of Amoss, Winchester, Voithofer and Miller, which is of great possible future detriment to these neighbors.

**BUILDING AND PARKING LOT LAYOUTS**  
**DO NOT REINFORCE EXISTING BUILDINGS AND STREETScape PATTERNS**

**SECTION 26-282(b)(2)**

Directly contrary to the provisions of Section 26-282(b)(2), this proposed townhouse development will in no way reinforce existing building and parking lot layouts, but will be exactly contrary to the single-family nature of this neighborhood, as called for by both the Master Plan and the D.R.5.5 zoning. It will open the door to more townhouses and change the character of the neighborhood.

**STREET CONNECTIONS**

**SECTION 26-282(b)(3)**

The proposed street connections, both at the McNeal Property border, and Road D linking up to Shirleybrook Avenue, are both contrary to the objectives of Section 26-282(b)(3). In fact, the link to Road D and Shirleybrook Avenue would change Shirleybrook Avenue from a small, quiet single-family

residential street to a direct connector for anyone who wishes to go toward White Marsh Mall to the east. Shirleybrook Avenue was not designed for, and cannot carry such traffic. Admittedly, the Petitioners have asked for a waiver of the actual construction of this road, but as long as it is shown on the record plat, and available, sooner or later it may be opened if the incompatible project is built. It is proposed to be dedicated to the County.

Finally, the lack of a road link to Nottingham through this property will throw the load on Shirleybrook Avenue, no matter how it is developed.

#### ARRANGEMENT OF OPEN SPACES

##### SECTION 26-282(b)(4)

The proposed open space areas on the site plan are not compatible with the existing open space pattern in the neighborhood, directly contrary to the requirements of Section 26-282(b)(4).

The Petitioners have concentrated their open space along the entrance road, but have not paid appropriate attention to the placement of open space along the west side of Shirleybrook Avenue, and against the McNeal Property to the north. The 2.4 acres of homeowner open space located in the central part of the proposed townhouse development is of no use to the neighbors, and is not practically available to any other neighbors, and serves only the site itself.

#### LOCALLY SIGNIFICANT FEATURES

##### SECTION 26-282(b)(5)

It is claimed that the dense woods on the Nottingham Village, Inc. property to the south forms an effective buffer against I-95 further to the south, but this so called buffer will be of little good if the Nottingham Village Property is subsequently developed also for townhouses, using Shirleybrook Avenue as its means of access.

#### PROPOSED LANDSCAPE DESIGN

##### SECTION 26-282(b)(6)

While the entrance road landscaping and open space is perhaps helpful, few efforts have been made to landscape along Shirleybrook Avenue to the east. In fact, RTA variances and

placement of the buildings themselves partially within the RTA area are requested, again without any showing of hardship, and merely in an effort to pack more townhouses onto the site. The RTA area against Shirleybrook Avenue should be particularly well observed, if this incompatible project should ever be built. Also, the Petitioner seeks set back and other variances without a showing of hardship or of required unique site conditions.

PROPOSED SIGNS, ETC. ARE INCOMPATIBLE

SECTION 26-282(b)(7)

The Petitioners are asking for a sign variance contrary to the Baltimore County Sign Ordinance, and contrary to Section 26-282(b)(7). There is no need for such a sign variance, even though it comes in a form of a decorative, entrance identification sign.

As for townhouse lighting, undoubtedly, many of the residents will place spotlights on the rear of their homes, and these will be particularly irksome and bothersome as the two rows of row homes proposed along the west side of Shirleybrook Avenue will shine annoying lighting on the single homes on Shirleybrook.

SCALE, PROPORTIONS, MASSING, AND DETAILING  
THE PROPOSED BUILDINGS ARE NOT IN PROPORTION TO  
THOSE EXISTING IN THE NEIGHBORHOOD

SECTION 26-282(b)(8)

The proposed seven unit townhouses are particularly out of proportion with the neighborhood. At least three of the seven unit variance requests are concentrated along the west side of Shirleybrook Avenue, and, of course, the protestants maintain that all of these townhouse units whether six in a group, or seven in a group, or five in a group are incompatible with the single-family residential nature called for by the Master Plan and by the base D.R.5.5 zoning.

APPROVAL OF THIS INCOMPATIBLE PROJECT  
WILL COMPLETELY DESTROY THIS SINGLE-FAMILY NEIGHBORHOOD

In the Glyn Garth case, both the Board of Appeals on August 19, 1994, and the Hearing Officer on June 9, 1994, in Case No. IV-448, Board of Appeals No. CBA-94-143, declared that the Glyn Garth project to be incompatible with a fringe area of Glyndon. The Glyn Garth project was not in the historic area,

and was, in fact, west of the railroad which classically divides Glyndon and was in the area of a major highway system, unlike this project.

Despite the proposal not to open Road D, undoubtedly if this road is dedicated to Baltimore County, it will hang over the residents of Shirleybrook Avenue like a sword, and it could always be opened and further fundamentally change the nature of their road.

Again, if this project is approved, undoubtedly the Bartenfelder Property to the south will be next, and Nottingham Village, Inc. Property to the south follow after that. It will completely destroy the areas single-family character, as well as place vastly inappropriate traffic on Shirleybrook Avenue and on Babikow Road, neither of which are designed for it.

School buses, children and drivers will be further imperiled by this unwarranted traffic increase of almost 1000 trips per day just for this property, not counting Bartenfelder or Nottingham.

#### THE VARIANCES

The Petitioners have shown no practical difficulty or unreasonable hardship, nor any peculiar conditions specific to this site, to allow the proposed RTA Variances, or the setback variances. The RTA Variances are merely an effort to crowd the site, as are the setback variances.

#### FINDING OF INCOMPATIBILITY URGED

However, the Hearing Officer need never reach these R.T.A. and Setback variances, if the fundamental finding of incompatibility pursuant to these reasons, and for other reasons to be brought out at the time of the hearing hereon is confirmed.

#### REFERRAL TO PLANNING BOARD

The Hearing Officer is required, by the mandatory word "shall", to refer this matter to the Planning Board because of a conflict with the Master Plan. The Master Plan calls for single family dwellings, and multi-family dwellings are proposed. There is a conflict, and the case must be referred to the Planning Board.


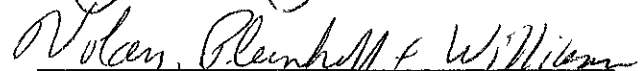
For all of these reasons, and others, to be submitted in the course of these hearings, the Protestants respectfully

LAW OFFICES  
NOLAN, PLUMHOFF  
& WILLIAMS,  
CHARTERED

11-11-1968

ask the Hearing Officer not to find the project compatible, not to ruin their neighborhood, and not to grant any variances at all.

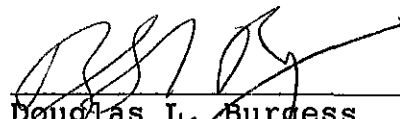
Respectfully submitted,

  
\_\_\_\_\_  
Douglas L. Burgess  
\_\_\_\_\_  
Nolan, Plumhoff & Williams  
Suite 700, Court Towers  
210 W. Pennsylvania Avenue  
Towson, Maryland 21204  
410-823-7800

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 30th day of December, 1994, a copy of the foregoing Protestants' Hearing Memorandum was hand delivered to:

1. Benjamin J. Bronstein, Esquire  
Suite 205, The Susquehanna Building  
29 West Susquehanna Avenue  
Towson, Maryland 21204
2. J. Carroll Holzer, Esquire  
Suite 502  
305 Washington Avenue  
Towson, Maryland 21204
3. Peter Max Zimmerman, Esquire and  
Carol DeMilio, Esquire  
Peoples Counsel Office  
Old Courthouse  
Towson, Maryland 21204

  
\_\_\_\_\_  
Douglas L. Burgess

LAW OFFICES  
NOLAN, PLUMHOFF  
& WILLIAMS,  
CHARTERED

8613C

NEWTON A. WILLIAMS  
THOMAS J. RENNER  
WILLIAM P. ENGLEHART, JR.  
STEPHEN J. NOLAN\*  
ROBERT L. HANLEY, JR.  
ROBERT S. GLUSHAKOW  
STEPHEN M. SCHENNING  
DOUGLAS L. BURGESS  
ROBERT E. CAHILL, JR.  
E. BRUCE JONES\*\*  
J. JOSEPH CURRAN, III

LAW OFFICES  
**NOLAN, PLUMHOFF & WILLIAMS**  
**CHARTERED**  
SUITE 700, COURT TOWERS  
210 WEST PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204-5340  
(410) 823-7800  
TELEFAX: (410) 296-2765

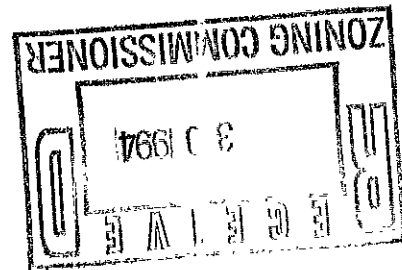
JAMES D. NOLAN  
(RETIRED 1980)  
J. EARLE PLUMHOFF  
(1940-1988)  
RALPH E. DEITZ  
(1918-1990)  
OF COUNSEL  
T. BAYARD WILLIAMS, JR.  
WRITER'S DIRECT DIAL  
823- 7857

\*ALSO ADMITTED IN D.C.  
\*\*ALSO ADMITTED IN NEW JERSEY

December 30, 1994

HAND DELIVERY

Mr. Timothy Kotroco  
Deputy Hearing Officer  
Baltimore County Government  
Zoning Commissioner's Office  
Old Courthouse  
Towson, Maryland 21204



Dear Mr. Kotroco:

Enclosed for filing and for your consideration, please find the following:

- a. Entry of Appearance;
- b. Hearing Memorandum.

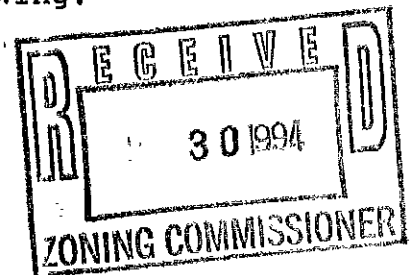
I note from Zoning Assignment this case is scheduled for January 4, 5 and 9, with the 10th and 11th as overlap days.

I request the Commissioner schedule a brief meeting with all Counsel on January 3 to accomplish the following:

1. Exchange of exhibit lists;
2. Exchange of list of expert witnesses;
3. Exchange of expert reports\*.

The reason for my request is two fold:

1. Expediting the hearing process; and
2. Protecting rights for "notice and opportunity" to be heard. For example, if Protestants have no notice or copy of a report of a particular expert, it may be reversal error for you to deny Protestants a continuance in order to seek their expert in order to properly cross-examine or rebut said experts.



\* As of the date of this letter, some reports may have been provided.

MICROFILMED

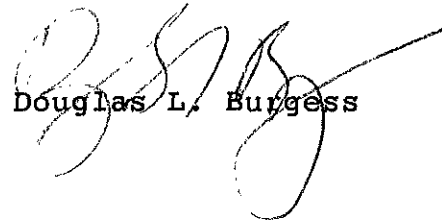
Mr. Timothy Kotroco  
December 30, 1994  
Page Two

My suggested resolution is a pre-hearing conference with the disclosures indicated.

A final problem has come to my attention regarding posting. Evidentially, the hearing officer directed that the site was to be posted ten (10) days prior to the new hearing. I am told that has not been done. Protestants specifically reserve their rights to object due to the lack of notice.

Warm wishes for the New Year.

Very truly yours,



Douglas L. Burgess

DLB/caw

Enclosures

cc: Benjamin Bronstein, Esquire  
Carroll Holzer, Esquire  
Peter Zimmerman, Esquire  
Thomas Seymour, President

RECEIVED  
JAN 2 1995

11-14-94

RE: PETITION FOR VARIANCE	*	BEFORE THE
SE/S Babikow Rd. and SW Shirleybrook		
Ave. (Shirleybrook Village), 11th	*	ZONING COMMISSIONER
Election Dist., 6th Councilmanic		
	*	OF BALTIMORE COUNTY
Jenkins Family Limited Partnership		
Petitioners	*	CASE NO. 95-148-A

\* \* \* \* \*

ENTRY OF APPEARANCE

Please enter the appearance of the People's Counsel in the above-captioned matter. Notice should be sent of any hearing dates or other proceedings in this matter and of the passage of any preliminary or final Order.

*Peter Max Zimmerman*

PETER MAX ZIMMERMAN  
People's Counsel for Baltimore County

*Carole S. Demilio*

CAROLE S. DEMILIO  
Deputy People's Counsel  
Room 47, Courthouse  
400 Washington Avenue  
Towson, MD 21204  
(410) 887-2188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 1994, a copy of the foregoing Entry of Appearance was mailed to Benjamin Bronstein, Esquire, Evans, George & Bronstein, 29 W. Susquehanna Avenue, Suite 205, Towson, MD 21204, attorney for Petitioner.

*Peter Max Zimmerman*

PETER MAX ZIMMERMAN

RECEIVED





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

February 7, 1995

Benjamin Bronstein, Esquire  
EVANS, GEORGE AND BRONSTEIN  
Susquehanna Bldg., Suite 205  
29 W. Susquehanna Avenue  
Towson, MD 21204

J. Carroll Holzer, P.A.  
HOLZER and LEE  
305 Washington Avenue, Suite 502  
Towson, MD 21204

Re: Case No. CBA-95-107 (ZADM XIV-338)  
and 95-148-A /Shirleybrook Village


Dear Counsel:

The Board is in receipt of your Request for Oral Argument and Submission of Written Briefs filed in the subject matter. Your request has been granted by the Board.

Notice of Assignment, a copy of which is enclosed for your convenience, was sent to all parties this week, and this matter has been scheduled for hearing on Tuesday, March 14, 1995 at 10:00 a.m.

Should you have any additional questions, please call me at 887-3180.

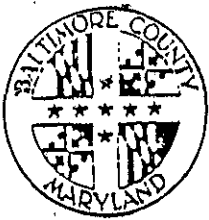
Very truly yours,

  
Kathleen C. Weidenhammer  
Administrative Assistant

Enclosure

cc: Douglas Burgess, Esquire  
People's Counsel for Baltimore County  
Michael J. Moran, Assistant County Attorney





# Petition for Variance

95-148-A 143  
to the Zoning Commissioner of Baltimore County

for the property located at

Southeast side of Babikow Road

Southwest Shirleybrook Avenue

which is presently zoned

DR5.5

This Petition shall be filed with the Office of Zoning Administration & Development Management.

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Variance from Section(s)

see attached

of the Zoning Regulations of Baltimore County, to the Zoning Law of Baltimore County; for the following reasons: (Indicate hardship or practical difficulty)

1. Configuration of property
2. Such other and further reasons as may be demonstrated at the time of hearing.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Variance advertising, posting, etc., upon filing of this petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City State Zipcode

Attorney for Petitioner: Benjamin Bronstein  
Evans, George and Bronstein

(Type or Print Name)

Signature

29 W. Susquehanna Ave., Suite 205  
Address Phone No. 296-0200  
Baltimore Maryland 21204  
City State Zipcode

(We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):

Jenkins Family Limited Partnership

(Type or Print Name)

Signature

General Partner

(Type or Print Name)

Signature

3208 Joppa Road

Address

Phone No.

Baltimore Maryland 21234

City

State

Zipcode

Name, Address and phone number of legal owner, contract purchaser or representative to be contacted.

D.S. Thaler and Associates, Inc.

Name

7115 Ambassador Road

944-3647

Address

Phone No.

OFFICE USE ONLY

ESTIMATED LENGTH OF HEARING

unavailable for Hearing

the following dates

Next Two Months

ALL

OTHER

REVIEWED BY:

DATE

ORDER RECEIVED FOR FILING

Date

NOT RECORDED

148

PETITION FOR VARIANCE

95-148-A

1. 1B01.2.C.1.c and CMDP II A p. 19 to permit a side building setback of 15 ft to a public street R/W in lieu of the required 25 ft.

2. Section 504.2 and CMDP II A p. 21 to permit a maximum of 13 parking spaces not separated by an island or peninsula in lieu of the maximum 10 parking spaces.

3. 301.1A and ~~1B01.1B.1.c(2)~~ <sup>1B01.2.C.1.c</sup> to permit a rear property line setback (for open projections) of 18 ft in lieu of the required 22.5 ft and to permit accessory structures and fences to be located in RTA areas not subject to the 75 ft setback requirement.

4. 413.1.E.1 to permit a double face community sign of 168 sq ft in lieu of the permitted 15 sq ft.

RECEIVED

August 18, 1994

**Description of Shirleybrook Village  
for Zoning Purposes Only**

Beginning at a point at the center of Shirleybrook Avenue (16' +/- paving) at the distance of 609 +/- feet southeast of the intersection of Babikow Road and Shirleybrook Avenue, thence running the following courses and distances:

1. South 37°48'07" East 606.74 feet;
2. South 42°13'57" West 843.85 feet;
3. South 64°19'24" East 515.04 feet;
4. South 40°19'45" West 258.05 feet;
5. South 48°59'52" West 147.00 feet;
6. North 25°45'08" West 617.79 feet;
7. North 72°15'26" West 126.34 feet;
8. North 61°12'07" West 428.69 feet;
9. South 75°02'53" West 132.00 feet;
10. South 83°37'19" West 114.62 feet;
11. North 84°00'20" West 99.92 feet;
12. North 86°24'20" West 284.63 feet;
13. North 10°56'39" East 79.77 feet;
14. North 13°01'38" East 54.27 feet;
15. North 16°04'54" East 49.17 feet;
16. North 20°17'46" East 43.01 feet;
17. North 29°31'45" East 46.38 feet;
18. North 83°15'54" East 188.45 feet;
19. North 84°34'54" East 374.13 feet;

95-148-A

page 2  
Descriptions  
Shirleybrook Avenue

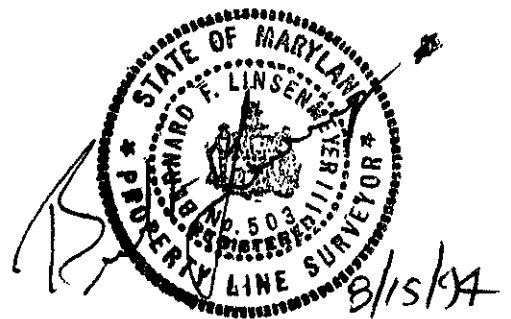
20.	North 85°29'04" East	147.03 feet;
21.	North 51°19'04" East	534.47 feet;
22.	North 37°43'58" West	597.13 feet;
23.	North 47°33'51" East	20.12 feet;
24.	South 37°43'58" East	596.00 feet;
25.	North 48°30'54" East	243.00 feet to

the point of the beginning.

Recorded in the Land Records of Baltimore County, Maryland in  
deed liber 3688 folio 210.

Containing 987,348 square feet or 22.666 acres of land, more  
or less.

Also located in the fourteenth election district..



MICROFILMED

# NOTICE OF HEARING

The Zoning Commission of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

Case: #95-145-A  
(Item 148)

SE/8 Babikow Road and  
SW Shirleybrook Avenue  
(Shirleybrook Village)  
11th Election District  
6th Councilmanic

Petitioner(s):  
Jenkins Family Limited  
Partnership

Hearing: Wednesday,  
November 30, 1994 at  
9:00 a.m. in Rm. 106,  
County Office Building.

Variances to permit a side building setback of 18 feet to a public street in lieu of the required 22.5 feet; to permit a maximum of 15 parking spaces not separated by an island or peninsula; in lieu of the maximum 10 parking spaces; to permit a rear property line setback (for open projections) of 18 feet in lieu of the required 22.5 feet and to permit accessory structures and fences to be located in RTA areas not subject to the 75 foot setback requirement; and to permit a double-face community sign of 168 square feet in lieu of the permitted 15 square feet.

LAWRENCE E. SCHMIDT  
Zoning Commissioner for  
Baltimore County

NOTES: (1) Hearings are Handi-  
capped Accessible for special ac-  
commodations. Please Call  
387-3359.

(2) For information concern-  
ing the File and/or Hearing, Please  
Call 887-3391.

10/31/94 Oct. 27.

# CERTIFICATE OF PUBLICATION

TOWSON, MD.,

Oct. 28, 1994

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on Oct. 27, 1994.

THE JEFFERSONIAN,

A. Henickson  
LEGAL AD. - TOWSON

~~Publication~~

MICROFILMED



Baltimore County  
Zoning Administration &  
Development Management  
111 West Chesapeake Avenue  
Towson, Maryland 21204

receipt

95-148-A

Account: R-001-6150

Number

148

Date

10/19/94

By JLL

FILING  
MULTIPLE VARIANCE  
FOR RES. DEV.

CODE 070

\$650.00

2 VAR SIGNS.

CODE 080

70.00

\$720.00

MICROFILMED.

Owner: Venkiris Family Ptd. Partnership

PAID BY EVANS, GEORGE +  
BRONSTEIN

LOC. Center of Shirleybrook Ave 609 FT  
OFF BABIKOW RD.

USC# 110317M11-HRC

\$720.00

BA 0002:49PM10-19-94

Please Make Checks Payable To: Baltimore County

Cashier Validation

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 156212

DATE 2/2/95 ACCOUNT R-001-6150

AMOUNT \$ 210.00

RECEIVED Benjamin Bronstein  
FROM: \_\_\_\_\_

FOR: Jenkins Family Limited Partnership  
Zoning Variance 95-148-A

VALIDATION OR SIGNATURE OF CASHIER  
DISTRIBUTION  
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

No. 156211

DATE 2/2/95 ACCOUNT r-001-6150

AMOUNT \$ 250.00

RECEIVED Benjamin Bronstein  
FROM: \_\_\_\_\_

FOR: Jenkins Family Limited Partnership  
Development Plan ~~XXXXXXXX~~ Hearing  
XIV-338

VALIDATION OR SIGNATURE OF CASHIER  
DISTRIBUTION  
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER

MICROFILMED



**CERTIFICATE OF POSTING**  
**ZONING DEPARTMENT OF BALTIMORE COUNTY**  
**Towson, Maryland**

96-148-A

District 1108

Date of Posting 7/14/95

Posted for: Appeal

Petitioner: Shirley Brook Village

Location of property: SE/3 Bobikow Rd., subd Shirley Brook Ave.

Location of Signs: Facing road way, on property being appealed  
for zoning

Remarks:

Posted by M. L. L. L.  
Signature

Date of return: 7/14/95

Number of Signs: 1

UNRECORDED

Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

ZONING HEARING ADVERTISING AND POSTING REQUIREMENTS & PROCEDURES

Baltimore County Zoning Regulations require that notice be given to the general public/neighboring property owners relative to property which is the subject of an upcoming zoning hearing. For those petitions which require a public hearing, this notice is accomplished by posting a sign on the property and placement of a notice in at least one newspaper of general circulation in the County.

This office will ensure that the legal requirements for posting and advertising are satisfied. However, the petitioner is responsible for the costs associated with these requirements.

PAYMENT WILL BE MADE AS FOLLOWS:

- 1) Posting fees will be accessed and paid to this office at the time of filing.
- 2) Billing for legal advertising, due upon receipt, will come from and should be remitted directly to the newspaper.

NON-PAYMENT OF ADVERTISING FEES WILL STAY ISSUANCE OF ZONING ORDER.

ARNOLD JABLON, DIRECTOR

For newspaper advertising:

Item No.: H148

Petitioner: Jenkins Family Limited Partnership

Location: SE, Babcock Rd

PLEASE FORWARD ADVERTISING BILL TO:

NAME: Adrian Emma, Builders Inc

ADDRESS: 1701 Falls Road

21201

PHONE NUMBER: 685 5207

AJ:ggs

(Revised 04/09/93)

MICROFILMED

TO: PUTUXENT PUBLISHING COMPANY  
October 27, 1994 Issue - Jeffersonian

Please forward billing to:

Benjamin Bronstein, Esq.  
29 W. Susquehanna Avenue, Suite 205  
Towson, Maryland 21204  
296-0200

---

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204

or

Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 95-148-A (Item 148)

SE/S Babikow Road and SW Shirleybrook Avenue

(Shirleybrook Village)

11th Election District - 6th Councilmanic

Petitioner(s): Jenkins Family Limited Partnership

HEARING: WEDNESDAY, NOVEMBER 30, 1994 at 9:00 a.m. in Room 106, County Office Building.

Variance to permit a side building setback of 15 feet to a public street r/w in lieu of the required 25 feet; to permit a maximum of 13 parking spaces not separated by an island or peninsula in lieu of the maximum 10 parking spaces; to permit a rear property line setback (for open projections) of 18 feet in lieu of the required 22.5 feet and to permit accessory structures and fences to be located in RTA areas not subject to the 75 foot setback requirement; and to permit a double-face community sign of 168 square feet in lieu of the permitted 15 square feet.

LAWRENCE E. SCHMIDT  
ZONING COMMISSIONER FOR BALTIMORE COUNTY

NOTES: (1) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(2) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, PLEASE CALL 887-3391.

MICROFILMED

Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

OCTOBER 21, 1994

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County, will hold a public hearing on the property identified herein in  
Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204  
or  
Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

DEVELOPMENT PLAN HEARING

PROJECT NAME: SHIRLEYBROOK VILLAGE

NUMBER: XIV-338

LOCATION: SE/S Babikow Road and SW Shirleybrook Avenue

ACRES: 22.8+/-

DEVELOPER: Jenkins Family Limited Partnership

PROPOSAL: 2 Single Family Dwellings and 105 Townhouses

AND

CASE NUMBER: 95-148-A (Item 148)

SE/S Babikow Road and SW Shirleybrook Avenue

(Shirleybrook Village)

11th Election District - 6th Councilmanic

Petitioner(s): Jenkins Family Limited Partnership

Variance to permit a side building setback of 15 feet to a public street r/w in lieu of the required 25 feet; to permit a maximum of 13 parking spaces not separated by an island or peninsula in lieu of the maximum 10 parking spaces; to permit a rear property line setback (for open projections) of 18 feet in lieu of the required 22.5 feet and to permit accessory structures and fences to be located in RTA areas not subject to the 75 foot setback requirement; and to permit a double-face community sign of 168 square feet in lieu of the permitted 15 square feet.

HEARING: WEDNESDAY, NOVEMBER 30, 1994 at 9:00 a.m. in Room 106, County Office Building.

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

Arnold Jablon  
Director

cc: Jenkins Family Limited Partnership  
D. S. Thaler and Associates, Inc.  
Benjamin Bronstein, Esq.

NOTES: (1) ZONING SIGN & POST MUST BE RETURNED TO RM. 104, 111 W. CHESAPEAKE AVENUE ON THE HEARING DATE.  
(2) HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.  
(3) FOR INFORMATION CONCERNING THE FILE AND/OR HEARING, CONTACT THIS OFFICE AT 887-3391.





County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

Hearing Room -  
Room 48, Old Courthouse

February 3, 1995

NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

SHIRLEYBROOK VILLAGE /Jenkins Family Ltd.  
Partnership - Owners; and Sidney Emmer  
Builders, Inc.- Developer SE/s Babikow Road,  
SW/s Shirleybrook Avenue  
11th E; 6th C

CASE NO. CBA-95-107  
AND  
CASE NO. 95-148-A

RE: Denial of Development Plan

VAR -Setbacks, parking spaces, RTA; and sign

1/23/95 -Decision of Hearing Officer in which  
Development Plan was DENIED; and Petition for  
Variances DENIED.

ASSIGNED FOR:

TUESDAY, MARCH 14, 1995 at 10:00 a.m.

cc: Benjamin Bronstein, Esquire

Counsel for Appellants /  
Owners and Developer  
Counsel for Appellants /  
Owners and Developer

J. Carroll Holzer, Esquire

Jenkins Family Ltd. Partnership  
Sidney Emmer Builders, Inc.  
David S. Thaler

Owners  
Developer  
D.S. Thaler & Associates, Inc.

Douglas Burgess, Esquire

Counsel for Protestants -  
South Perry Hall Blvd. Improvement  
Association, Inc., et al

Mr. Preston Snedegar /Protestant  
Mr. William C. McNeal /Protestant

Pat Keller  
Lawrence E. Schmidt  
Donald T. Rascoe /ZADM  
W. Carl Richards /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM  
People's Counsel for Baltimore County  
Michael J. Moran, Asst. County Attorney

RECEIVED

FEB 8 1995

ZADM

Kathleen C. Weidenhammer  
Administrative Assistant





# County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

Hearing Room -  
Room 48, Old Courthouse

February 3, 1995

## NOTICE OF ASSIGNMENT

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

*Amended 3/08/95. Will continue on 3/14 @ request of Counsel for Protestants see 3/08/95 newspaper*

SHIRLEYBROOK VILLAGE /Jenkins Family Ltd. Partnership - Owners; and Sidney Emmer Builders, Inc. - Developer SE/s Babikow Road, SW/s Shirleybrook Avenue 11th E; 6th C

CASE NO. CBA-95-107  
AND

CASE NO. 95-148-A

RE: Denial of Development Plan

VAR. Setbacks, parking spaces, RTA; and sign

1/23/95 -Decision of Hearing Officer in which Development Plan was DENIED; and Petition for Variances DENIED.

ASSIGNED FOR: TUESDAY, MARCH 14, 1995 at 10:00 a.m.

cc: Benjamin Bronstein, Esquire

J. Carroll Holzer, Esquire

Jenkins Family Ltd. Partnership  
Sidney Emmer Builders, Inc.  
David S. Thaler

Douglas Burgess, Esquire

Mr. Preston Snedegar /Protestant  
Mr. William C. McNeal /Protestant

Pat Keller  
Lawrence E. Schmidt  
Donald T. Rascoe /ZADM  
W. Carl Richards /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM  
People's Counsel for Baltimore County  
Michael J. Moran, Asst. County Attorney

Counsel for Appellants /  
Owners and Developer  
Counsel for Appellants /  
Owners and Developer

Owners  
Developer  
D.S. Thaler & Associates, Inc.

Counsel for Protestants -  
South Perry Hall Blvd. Improvement  
Association, Inc., et al

**MICROFILMED**

Kathleen C. Weidenhammer  
Administrative Assistant





# County Board of Appeals of Baltimore County

OLD COURTHOUSE, ROOM 49  
400 WASHINGTON AVENUE  
TOWSON, MARYLAND 21204  
(410) 887-3180

Hearing Room -  
Room 48, Old Courthouse

March 8, 1995

## NOTICE OF ASSIGNMENT /AMENDED

NO POSTPONEMENTS WILL BE GRANTED WITHOUT GOOD AND SUFFICIENT REASONS. REQUESTS FOR POSTPONEMENTS MUST BE IN WRITING AND IN STRICT COMPLIANCE WITH RULE 2(b). NO POSTPONEMENTS WILL BE GRANTED WITHIN FIFTEEN (15) DAYS OF SCHEDULED HEARING DATE UNLESS IN FULL COMPLIANCE WITH RULE 2(c), COUNTY COUNCIL BILL NO. 59-79.

SHIRLEYBROOK VILLAGE /Jenkins Family Ltd.  
Partnership - Owners; and Sidney Emmer  
Builders, Inc.- Developer SE/s Babikow Road,  
SW/s Shirleybrook Avenue  
11th E; 6th C

CASE NO. CBA-95-107

AND

CASE NO. 95-148-A

RE: Denial of Development Plan

VAR -Setbacks, parking spaces, RTA; and sign  
1/23/95 -Decision of Hearing Officer in which  
Development Plan was DENIED; and Petition for  
Variances DENIED.

## ASSIGNED FOR:

TUESDAY, MARCH 14, 1995 at 10:00 a.m.

NOTE: Board will convene at 10 a.m. on March 14, 1995 only for purpose of granting a general continuance of this matter on the record, pursuant to request of Counsel for Protestants (South Perry Hall Blvd Imp Assn et al); no testimony or evidence to be received.

cc: Benjamin Bronstein, Esquire

J. Carroll Holzer, Esquire

Jenkins Family Ltd. Partnership

Sidney Emmer Builders, Inc.

David S. Thaler

Douglas Burgess, Esquire /

Leslie M. Pittler, Esquire

Counsel for Appellants /  
Owners and Developer

Counsel for Appellants /  
Owners and Developer

Owners

Developer

D.S. Thaler & Associates, Inc.

Counsel for Protestants -  
South Perry Hall Blvd. Improvement  
Association, Inc., et al

Mr. Preston Snedegar /Protestant

Mr. William C. McNeal /Protestant

Mr. Melvin Inners /Protestant

Pat Keller

Lawrence E. Schmidt

Donald T. Rascoe /ZADM

W. Carl Richards /ZADM

Docket Clerk /ZADM

Arnold Jablon, Director /ZADM

People's Counsel for Baltimore County

Michael J. Moran, Asst. County Attorney

MICROFILMED

Kathleen C. Weidenhammer  
Administrative Assistant



BALTIMORE COUNTY, MARYLAND  
OFFICE OF FINANCE - REVENUE DIVISION  
MISCELLANEOUS CASH RECEIPT

156313

DATE 2/2/95 ACCOUNT R-001-6150

AMOUNT \$ 210.00

RECEIVED FROM: Benjamin Bronstein

FOR: Jenkins Family Limited Partnership - appeal  
Zoning Variance 95-148-A

**MICROFILMED** 03A03W002DMICHRC  
BA C002147F002-02-95

\$210.00

VALIDATION OR SIGNATURE OF CASHIER

DISTRIBUTION  
WHITE - CASHIER PINK - AGENCY YELLOW - CUSTOMER



CASE NOS. 95-148-A and CBA-95-107

SE/S Babikow Road, SW/s Shirleybrook Avenue  
(Shirleybrook Village)

71th District

Appealed 1/23/95

Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

Benjamin Bronstein  
29 W Susquehanna Avenue, Suite 205  
Towson Maryland 21204

NOV. 7 7 1994

RE: Case No. 95-148A, Item No. 148  
Petitioner: Jenkins Family Limited Partnership

Dear Mr. Bronstein:

The Zoning Advisory Committee (ZAC) has reviewed the plans submitted with the above-referenced petition, which was accepted for filing on October 19, 1994 and scheduled for a hearing accordingly. Any attached comments from a reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., zoning commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.


Any comments submitted thus far from the members of ZAC that offer or request information on your petition are attached. Only those comments that are informative will be forwarded to you; those that are not informative will be placed in the hearing file.

The following is related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office:

1. The director of the Office of Zoning Administration and Development Management has instituted a system whereby zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions' filing requirements can file their petitions with this office without the necessity of a preliminary review by zoning personnel.
2. Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is the possibility that another hearing will be required or the zoning commissioner will deny the petition due to errors or incompleteness.
3. Those individuals who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72-hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e., 72 hours, will result in the forfeiture loss of the filing fee.

If you have any questions concerning the enclosed comments, please feel free to contact Joyce Watson in the zoning office at 887-3391 or the commenting agency.

Sincerely,

  
W. Carl Richards, Jr.  
Zoning Supervisor

WCR/jnw

Enclosure(s)  
Printed with soy-based ink  
on Recycled Paper

MICROFILMED

B A L T I M O R E   C O U N T Y,   M A R Y L A N D  
DEPARTMENT OF ENVIRONMENTAL PROTECTION AND RESOURCE MANAGEMENT  
INTER-OFFICE CORRESPONDENCE

November 7, 1994

TO: Mr. Arnold Jablon, Director  
Zoning Administration and  
Development Management

FROM: J. Lawrence Pilson *JLP*  
Development Coordinator, DEPRM

SUBJECT: Zoning Item #148 - Shirleybrooke Village  
Babikow Road  
Zoning Advisory Committee Meeting of October 31, 1994

The Department of Environmental Protection and Resource Management offers the following comments on the above-referenced zoning item.

Environmental Impact Review

Development of the property must comply with the Regulations for the Protection of Water Quality, Streams, Wetlands and Floodplains.

All Environmental Impact Review comments regarding this development plan were forwarded at the Development Plan meeting held on November 2, 1994.

Development Coordination

Comments for the Development Plan Conference dated 11/2/94 apply to this site.

✓  
JLP:GS:BS:sp

SHIRLEY2/DEPRM/TXTSBP

RECEIVED  
NOV 10 1994



**Maryland Department of Transportation  
State Highway Administration**

O. James Lighthizer  
Secretary  
Hal Kassoff  
Administrator

11-4-94

Ms. Julie Winiarski  
Zoning Administration and  
Development Management  
County Office Building  
Room 109

111 W. Chesapeake Avenue  
Towson, Maryland 21204

ATTENTION: MS. JOYCE WATSON

Dear Ms. Winiarski:

Re: Baltimore County

Item No.: #148 (JLL)

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration project.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,

*Bob Small*

*for*

Ronald Burns, Chief  
Engineering Access Permits  
Division

BS/

My telephone number is \_\_\_\_\_

Maryland Relay Service for Impaired Hearing or Speech  
1-800-735-2258 Statewide Toll Free

Mailing Address: P.O. Box 717 • Baltimore, MD 21203-0717  
Street Address: 707 North Calvert Street • Baltimore, Maryland 21202

**MICROFILMED**

BALTIMORE COUNTY, MARYLAND  
INTEROFFICE CORRESPONDENCE

TO: Arnold Jablon, Director      DATE: Nov. 7, 1994  
Zoning Administration and Development Management

FROM: *pub* Robert W. Bowling, P.E., Chief  
Developers Engineering Section

RE: Zoning Advisory Committee Meeting  
for Nov. 7, 1994  
Item No. 148

The Developers Engineering Section has reviewed the subject zoning item. This site is subject to the previous landscape review comments.

RWB:sw

MICROFILMED

Baltimore County Government  
Fire Department



700 East Joppa Road  
Towson, MD 21286-5500

Office of the Fire Marshal  
(410) 887-4880

DATE: 11/02/94

Arnold Jablon  
Director  
Zoning Administration and  
Development Management  
Baltimore County Office Building  
Towson, MD 21204  
MAIL STCP-1105

RE: Property Owner: SEE BELOW

LOCATION: DISTRIBUTION MEETING OF OCT. 31, 1994

Item No.: SEE BELOW

Zoning Agenda:

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

8. The Fire Marshal's Office has no comments at this time,  
IN REFERENCE TO THE FOLLOWING ITEM NUMBERS: 143, 144, 146, 147, 148,  
149, 151 AND 152.

**RECEIVED**  
NOV 4 1994  
**ZADM**

REVIEWER: LT. ROBERT P. SAUEFWALD  
Fire Marshal Office, PHONE 887-4881, MS-110EF

cc: File

1 MICROFILMED



BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

AMENDED DEVELOPMENT PLAN COMMENTS

TO: Arnold Jablon, Director - Zoning Administration & Development Management  
FROM: Arnold F. (Pat) Keller, III, Director - Office of Planning and Zoning  
DATE: November 17, 1994  
PROJECT NAME: SHIRLEYBROOK VILLAGE  
PROJECT NUMBER: XIV-338  
PROJECT PLANNER: Ervin McDaniel

RECOMMENDATION

DEVELOPMENT PLAN

The Office of Planning and Zoning has reviewed the Revised Compatibility Report and typical building elevations for this project and recommends the Development Plan be **APPROVED**.

COMPATIBILITY

The Director of Planning and Zoning find this project to be compatible.

MODIFICATION OF STANDARDS

The Director of Planning and Zoning recommends approval of the requested Modification of Standards for this project.

VARIANCE

The Office of Planning and Zoning recommends approval of the requested Variances.

Division Chief: 

AVA:EMcD:bjs

B A L T I M O R E   C O U N T Y ,   M A R Y L A N D

INTER-OFFICE CORRESPONDENCE

TO:        DEPRM - Glen Shaffer  
          DES    - Dennis Kennedy  
          OPZ    - Erv McDaniel  
          R&P    - Mike Grossman  
          ZADM   - Kate Milton

DATE:    November 10, 1994

FROM:     Joseph V. Maranto, Project Manager

SUBJECT: POST DPC        -        HOH on 11/30/94  
          SHIRLEYBROOK VILLAGE -    ZADM #XIV-338

Please review the attached plan for compliance with your agency's comments generated at the Development Plan Conference. Your final comments must be transmitted to this office no later than 12:00 Noon, 11/21/94.

At your earliest convenience, complete the appropriate box below, initial, date and return this form to the project manager at ZADM/DM in Room 123 of the County Office Building; the plan may be retained for your files.

.....  
RESPONSE

I have reviewed the red-lined plan and comment as follows:

/s/ Approval recommended *See attached comments*

/ / Other (please detail)

\_\_\_\_\_  
\_\_\_\_\_  
*Emc D* signed

ggl  
Attachment  
SHIRLEY/ZADM/TXTGGL

RECEIVED

NOV 10 1994

OFFICE OF  
PLANNING & ZONING

MICROFILMED



Baltimore County Government  
Office of Zoning Administration  
and Development Management



111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

January 31, 1995

Douglas Burgess, Esquire  
Nolan, Plumhoff & Williams  
210 W. Pennsylvania Avenue, Suite 700  
Towson, MD 21204

RE: Petition for Development Plan Hearing and  
Petition for Variance  
SE/S Babikow Road, SW/S Shirleybrook Avenue  
(Shirleybrook Village)  
11th Election District  
6th Councilmanic District  
Jenkins Family Ltd. Part., Owners and  
Mr. Sidney Emmer, Developer  
Case No. 95-148-A and (XIV-338) CBA-95-107

Dear Mr. Burgess:

Please be advised that an appeal of the above-referenced case was filed in this office on January 31, 1995 by Benjamin Bronstein, Esquire on behalf of Jenkins Family Limited Partnership. All materials relative to the case have been forwarded to the Board of Appeals.

If you have any questions concerning this matter, please do not hesitate to contact Julie Winiarski at 887-3353.

Sincerely,

A handwritten signature in cursive script, appearing to read "Arnold Jablon".

ARNOLD JABLON  
Director

AJ:jaw

c: Mr. David S. Thaler  
Mr. Joseph Maranto  
People's Counsel

95FEB-2 AM 11:46

COUNTY CLERK'S OFFICE

MICROFILMED



APPEAL

Petition for Variance  
SE/S Babikow Road, SW/S Shirleybrook Avenue  
(Shirleybrook Village)  
11th Election District - 6th Councilmanic District  
Jenkins Family Ltd, Part., Owners and  
Mr. Sidney Emmer, Developer  
Case No. 95-148-A

Petition(s) for Variance

Description of Property

Certificate of Publication

Entry of Appearance of People's Counsel

Zoning Plans Advisory Committee Comments

Entry of Appearance Attorney Douglas Burgess on behalf of Protestants

Hearing Memorandum in Support of South Perry Hall Blvd Improvement  
Association's Protest of Shirleybrook Village Project

Twelve letters of protest

Motor Vehicles and Traffic, Section 21.3

Notice of Appeal received on January 31, 1995 from Benjamin  
Bronstein, Esquire on behalf of Jenkins Family Limited Partnership,  
Owner

c: Benjamin Bronstein, Esquire, Evans, George and Bronstein, 29 W.  
Susquehanna Avenue, Suite 205, Towson, MD 21204  
J. Carroll Holzer, 305 Washington Avenue, Suite 502, Towson, 21204  
Mr. David S. Thaler, D. S. Thaler & Associates, Inc., 7115  
Ambassador Road, Baltimore, MD 21244  
Douglas Burgess, Esquire, Nolan, Plumhoff & Williams, 210 W.  
Pennsylvania Avenue, Suite 700, Towson, MD 21204  
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Supervisor  
Joseph Maranto, Project Manager  
Docket Clerk  
Arnold Jablon, Director of ZADM

RECORDED

APPEAL

Petition for Variance  
SE/S Babikow Road, SW/S Shirleybrook Avenue  
(Shirleybrook Village)  
11th Election District - 6th Councilmanic District  
Jenkins Family Ltd, Part., Owners and  
Mr. Sidney Emmer, Developer  
Case No. 95-148-A

(RIDING WITH  
C3A-95-107)

95 FEB - 2 AM 10:39

COPIES FORWARDED TO:

- ✓ Petition(s) for Variance
  - ✓ Description of Property
  - ✓ Certificate of Publication
  - ✓ Entry of Appearance of People's Counsel
  - ✓ Zoning Plans Advisory Committee Comments
  - ✓ Entry of Appearance Attorney Douglas Burgess on behalf of Protestants
  - ✓ Hearing Memorandum in Support of South Perry Hall Blvd Improvement Association's Protest of Shirleybrook Village Project
  - ✓ Twelve letters of protest
  - ✓ Motor Vehicles and Traffic, Section 21.3
  - ✓ Deputy Zoning Commissioner's Order dated January 23, 1995 (Denied)
  - ✓ Notice of Appeal received on January 31, 1995 from Benjamin Bronstein, Esquire on behalf of Jenkins Family Limited Partnership, Owner
  - ✓ Appeal Petition received on January 31, 1995 from Bronstein (attached to Appeal)
  - ✓ Request for Oral Argument & Submission of written briefs (attached to Appeal) received January 31, 1995.
- \* c: Benjamin Bronstein, Esquire, Evans, George and Bronstein, 29 W. Susquehanna Avenue, Suite 205, Towson, MD 21204  
J. Carroll Holzer, 305 Washington Avenue, Suite 502, Towson, 21204 (INT. PARTY FOR APPL. - CANT/PENITENCE)  
Mr. David S. Thaler, D. S. Thaler & Associates, Inc., 7115 Ambassador Road, Baltimore, MD 21244  
Douglas Burgess, Esquire, Nolan, Plumhoff & Williams, 210 W. Pennsylvania Avenue, Suite 700, Towson, MD 21204  
People's Counsel of Baltimore County, M.S. 2010

Request Notification: Patrick Keller, Director, Planning & Zoning  
Timothy M. Kotroco, Deputy Zoning Commissioner  
W. Carl Richards, Jr., Zoning Supervisor  
Joseph Maranto, Project Manager  
Docket Clerk  
Arnold Jablon, Director of ZADM

Jenkins Family Limited Partnership  
3208 Joppa Road  
Baltimore, MD 21234

Appellants /Owners

Mr. Sidney Emmer  
5601 Wexford Road  
Baltimore, MD 21209

Appellant /Developer

**ARTICLE I. IN GENERAL****Sec. 21-1. Definition of "vehicle."**

Wherever the word "vehicle" is used in this title, it shall be held to include every automobile and motorcycle and every wagon, carriage, omnibus, pushcart, bicycle, and other conveyance (except baby carriages), in whatever manner or by whatever force or power the same may be driven, propelled, or ridden, which is or may be used for and adopted to pleasure riding or transportation of passengers, baggage, merchandise, or freight upon the public highway, and all commercial stands, whether on wheels or otherwise, and every draught and riding animal, except that an animal or animals attached to any vehicle shall with such vehicle constitute one (1) vehicle.

(Code 1978, § 17-2)

**Cross reference**—Definitions and rules of construction generally, § 1-2.

**Sec. 21-2. Responsibility for traffic engineering.**

The department of public works shall be responsible for traffic safety and engineering, and the director of the department of public works shall be the traffic engineer. The traffic engineer of the county shall be responsible directly to the administrative officer and shall have such duties and perform such functions relating to traffic safety and engineering as may be assigned to him by the administrative officer or by legislative act of the county council.

(Code 1978, § 17-3)

**Cross reference**—Department of public works, § 2-71 et seq.

**Sec. 21-3. Obstruction of driver's view at street intersection.**

(a) The traffic engineer of the county, when notified that any trees, bushes, vines, fences, signs, or other obstructions are located on any property at an intersection of any highways or streets in the county or at an intersection of a side street or side road with a county or state highway in the county in such a manner as to obstruct the vision of the operators of vehicles as they reach such intersections, is hereby authorized and empowered to require the owner or owners of such prop-

erty located at such intersections to remove therefrom such trees, bushes, vines, fences, signs, or other obstructions within such time as the county shall in its discretion determine to be just.

(b) Any owner of such property failing to remove such obstruction within such time as may be limited in the notice from the county to do so shall be deemed guilty of a misdemeanor.

(c) In addition to the penalty herein provided for, the county shall have the power, after giving the aforesaid notice and upon failure of the owner of such property to comply therewith, to have such trees, bushes, vines, fences, signs, or other obstructions removed and charge the cost of such removal to the owners of such property, which cost or charges shall be a lien on such property and be collected in the same manner as taxes are now collected.

(Code 1978, § 17-4)

**Sec. 21-4. Riding skateboards on public highways or posted property prohibited.**

(a) It shall be unlawful for any person or persons to ride a skateboard on any public highway in the county or on any public property or commercial property in the county which has been conspicuously posted to prohibit skateboard riding.

(b) A violation of the provisions of this section shall be punishable by a fine of not less than ten dollars (\$10.00) nor more than fifty dollars (\$50.00).

(Code 1978, § 17-5)

**Sec. 21-5. Persons prohibited from clinging to buses, etc.**

(a) It shall be unlawful for any person to attach, cling, fasten, or tether himself or others or any sled or similar device, on or in which he or others are being or will be conveyed, to any motor vehicle upon any roadway, as such motor vehicle and roadway are defined in the Ann. Code of Md., Transportation article, or on any property used by the public in general.

(b) Any person violating any of the provisions of subsection (a) of this section shall be deemed guilty of a misdemeanor and upon conviction

2/03/95 -Notice of Assignment sent to following for hearing  
scheduled for Tuesday, March 14, 1995 at 10:00 a.m.:

Benjamin Bronstein, Esquire  
J. Carroll Holzer, Esquire  
Jenkins Family Ltd. Partnership  
Sidney Emmer Builders, Inc.  
David S. Thaler  
Douglas Burgess, Esquire  
South Perry Hall Blvd. Improvement  
Association, Inc., et al  
Mr. Preston Snedegar  
Mr. William C. McNeal  
Pat Keller  
Lawrence E. Schmidt  
Donald T. Rascoe /ZADM  
W. Carl Richards /ZADM  
Docket Clerk /ZADM  
Arnold Jablon, Director /ZADM  
People's Counsel for Baltimore County  
Michael J. Moran, Asst. County Attorney

---

2/07/95 -Letter to B. Bronstein and C. Holzer in response to Request for Oral Argument  
and Submission of Written Briefs; request granted. Copies of letter sent to  
M. Moran and P. Zimmerman along with courtesy copy of Notice with all copies.  
Advised Counsel that hearing scheduled for 3/14/95.

---

3/08/95 -See notation in file - Case No. CBA-95-107 /Shirleybrook -- Board to convene  
on March 14, 1995 for sole purpose of granting general continuance on record  
per request of L. Pittler, Counsel for Protestants (entered appearance 3/08/95  
as additional counsel for said Protestants /South Perry Hall Blvd Imp Assn et al).  
- Amended Notice of Assignment sent to parties advising that matter will be  
continued on record 3/14/95; no testimony or evidence to be taken at that  
time.

---

3/14/95 -Board convened at 10:00 a.m.; L. Pittler requested continuance; new development  
plan in progress for single-family homes; single-family plan desired by protestants.  
No objection by Bronstein, acquiesced to request; in event single-family plan is  
opposed, this plan to remain on hold. Continuance granted; no reset date unless  
such request made by parties.

MICROFILMED

Shirleybrook /XIV-338 /CBA-95-107 and  
Jenkins Family Ltd. Partnership /95-148-A

Page 2

---

5/13/96 -Order of Dismissal filed by B. Bronstein, C. Holzer, D. Burgess and L. Pitler as fully executed by same. Requesting dismissal of appeal with prejudice. Order of Dismissal to be issued by CBA.

RECEIVED

# 148

Gwen: FULL PROCESS  
AND

SIGNS / FOR BABIKOW RD  
/ FOR SHIRLEY BROOK RD.

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director                      DATE: October 18, 1996  
Attn.: Donald T. Rascoe  
Permits & Development Management

FROM: Charlotte E. Radcliffe *CR*  
County Board of Appeals

SUBJECT: Closed Files Case Nos.:  
CBA-95-107 - SHIRLEYBROOK /PDM XIV-338 and  
95-148-A - JENKINS FAMILY LTD. PARTNERSHIP

As no further appeals have been taken regarding the subject cases, we are hereby closing the files and returning same to you herewith.

Attachment (Case File Nos. CBA-95-107 /PDM XIV-338 and 95-148-A  
Large photo board and box of all other exhibits  
included)

MICROFILMED



10/24/94  
5189-94  
Y  
LAW OFFICES

**EVANS, GEORGE AND BRONSTEIN**

SUSQUEHANNA BUILDING, SUITE 205  
29 WEST SUSQUEHANNA AVENUE  
TOWSON, MARYLAND 21204  
(410) 296-0200  
FAX: (410) 296-3719

L. ROBERT EVANS  
HARRIS JAMES GEORGE  
BENJAMIN BRONSTEIN  
  
MICHAEL J. CHOMEL

October 20, 1994

Ms. Gwen Stephens  
Office of Zoning Administration  
and Development Management  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

RE: Jenkins Family Limited Partnership,  
Owner/Petitioner  
Zoning Item No.: 148  
ZADM Project No.: XIV-338

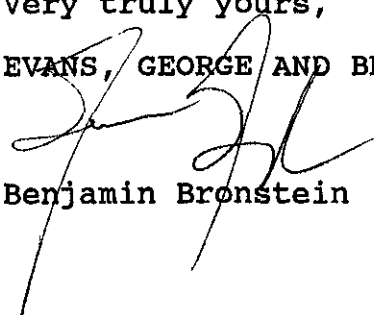
Dear Ms. Stephens:

The above entitled matters were filed on October 19, 1994. I hereby request that the matters be consolidated for hearing before the Zoning Commissioner/Hearing Officer in the late November or early in December, 1994.

Thank you for your kind consideration in this matter.

Very truly yours,

EVANS, GEORGE AND BRONSTEIN

  
Benjamin Bronstein

BB/mlg

RECEIVED

OCT 21 1994

ENCLOSURE

ZADM

LAW OFFICES

**EVANS, GEORGE AND BRONSTEIN**

SUSQUEHANNA BUILDING, SUITE 205  
29 WEST SUSQUEHANNA AVENUE  
TOWSON, MARYLAND 21204  
(410) 296-0200  
FAX: (410) 296-3719

L. ROBERT EVANS  
HARRIS JAMES GEORGE  
BENJAMIN BRONSTEIN

MICHAEL J. CHOMEL

January 31, 1995

**HAND DELIVERED**

Arnold Jablon, Director  
Department of Zoning Administration  
and Development Management  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

RE: Jenkins Family Limited Partnership, Owner/Petitioner  
Zoning Item No.: 95-148A  
ZADM Project No.: XIV-338

Dear Mr. Jablon:

I have enclosed the following:

1. Notices of Appeal in each of the above entitled cases;
2. Appeal Petition of Owner and Developer;
3. Request for Oral Arguments and Submission of Written Briefs; and
4. Check in payment of costs and sign posting.

Please enter my appearance together with the appearance of J. Carroll Holzer, 305 Washington Avenue, Suite 502, Towson, Maryland 21204 as attorneys for the Appellants.

Thank you for your kind attention to this matter.

Sincerely,

EVANS, GEORGE AND BRONSTEIN

Benjamin Bronstein

BB/mlg  
Enclosures

cc: The Honorable Timothy Kotroco  
Douglas Burgess, Esquire

**RECEIVED**

JAN 31 1995

**ZAL**

LAW OFFICES

**NOLAN, PLUMHOFF & WILLIAMS**

**CHARTERED**

SUITE 700, COURT TOWERS  
210 WEST PENNSYLVANIA AVENUE  
TOWSON, MARYLAND 21204-5340

(410) 823-7800

TELEFAX: (410) 296-2765

JAMES D. NOLAN  
(RETIRED 1980)

J. EARLE PLUMHOFF  
(1940-1988)

RALPH E. DEITZ  
(1918-1990)

OF COUNSEL

T. BAYARD WILLIAMS, JR.

WRITER'S DIRECT DIAL

823- 7857

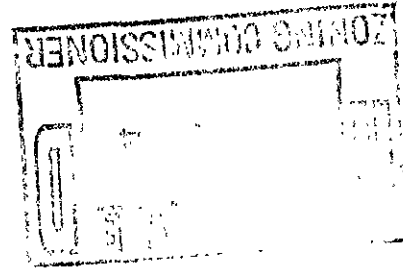
NEWTON A. WILLIAMS  
THOMAS J. RENNER  
WILLIAM P. ENGLEHART, JR.  
STEPHEN J. NOLAN\*  
ROBERT L. HANLEY, JR.  
ROBERT S. GLUSHAKOW  
STEPHEN M. SCHENNING  
DOUGLAS L. BURGESS  
ROBERT E. CAHILL, JR.  
E. BRUCE JONES\*\*  
J. JOSEPH CURRAN, III

\*ALSO ADMITTED IN D.C.  
\*\*ALSO ADMITTED IN NEW JERSEY

December 30, 1994

HAND DELIVERY

Mr. Timothy Kotroco  
Deputy Hearing Officer  
Baltimore County Government  
Zoning Commissioner's Office  
Old Courthouse  
Towson, Maryland 21204



Dear Mr. Kotroco:

Enclosed for filing and for your consideration, please find the following:

- a. Entry of Appearance;
- b. Hearing Memorandum.

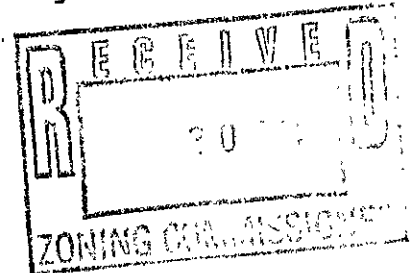
I note from Zoning Assignment this case is scheduled for January 4, 5 and 9, with the 10th and 11th as overlap days.

I request the Commissioner schedule a brief meeting with all Counsel on January 3 to accomplish the following:

1. Exchange of exhibit lists;
2. Exchange of list of expert witnesses;
3. Exchange of expert reports\*.

The reason for my request is two fold:

1. Expediting the hearing process; and
2. Protecting rights for "notice and opportunity" to be heard. For example, if Protestants have no notice or copy of a report of a particular expert, it may be reversal error for you to deny Protestants a continuance in order to seek their expert in order to properly cross-examine or rebut said experts.



\* As of the date of this letter, some reports may have been provided.

(MICROFILMED)

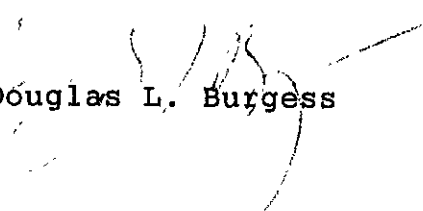
Mr. Timothy Kotroco  
December 30, 1994  
Page Two

My suggested resolution is a pre-hearing conference with the disclosures indicated.

A final problem has come to my attention regarding posting. Evidently, the hearing officer directed that the site was to be posted ten (10) days prior to the new hearing. I am told that has not been done. Protestants specifically reserve their rights to object due to the lack of notice.

Warm wishes for the New Year.

Very truly yours,

  
Douglas L. Burgess

DLB/caw

Enclosures

cc: Benjamin Bronstein, Esquire  
Carroll Holzer, Esquire  
Peter Zimmerman, Esquire  
Thomas Seymour, President

MICROFILMED

**LESLIE M. PITTLER**  
ATTORNEY AT LAW  
SUITE 610  
29 WEST SUSQUEHANNA AVENUE  
TOWSON, MARYLAND 21204

OFFICE 410-823-4455  
FAX 410-583-2437  
HOME 410-296-4461

March 8, 1995

William Hackett  
Chairman  
Baltimore County Board of Appeals  
Old Courthouse  
Towson, Maryland 21204

Re: Development Plan Hearing and  
Petition for Variance SE/S  
Babikow Road, SW/S  
Shirleybrook  
CASE#: XIV-338 & 95-148-A

Dear Mr. Chairman:

As you will note, I have entered my appearance as additional counsel to the Protestants also known as the South Perry Hall Community Association.

It is my request at this time for a general continuance of the hearing scheduled for March 14, 1995 on the above-captioned matter. This is being done with the full and complete knowledge of Benjamin Bronstein counsel for the Developer and Owners.

The basic reason for this request is the imminent filing of an additional plan by the developer for sixty single family homes. This plan has the general acceptance by the Association and the Association feels that a general continuance while the new plan is being processed is in the best interests of all parties.

95 MAR - 8 PM 3:52  
STONY BROOK  
LIBRARY

MICROFILMED

*Leslie M. Pittler*

William Hackett  
March 8, 1995  
Page -2-

I would request an immediate meeting with you and counsel so that Mr. Bronstein could share his client's thoughts on this matter with you. Mr. Bronstein, I am led to believe, could meet with us anytime you are available. I am hand delivering copies of this letter to all counsel.

Very truly yours,

A handwritten signature in black ink, appearing to read "Leslie M. Pittler", with a stylized, cursive script.

Leslie M. Pittler

LMP/pgb  
#3hackett.ltr

cc: South Perry Hall Community Association  
Benjamin Bronstein, Esquire  
J. Carroll Holzer, Esquire  
Douglas Burgess, Esquire

ENCLOSURE

7724 Babikow Road  
Baltimore, Maryland 21237  
January 15, 1995

Deputy Zoning Commissioner Timothy M. Kotroco  
400 Washington Ave.  
Towson, Maryland 21204

Dear Mr. Kotroco,

We are asking for your support in preventing townhouses from being constructed on the Jenkins property off of Babikow Road.

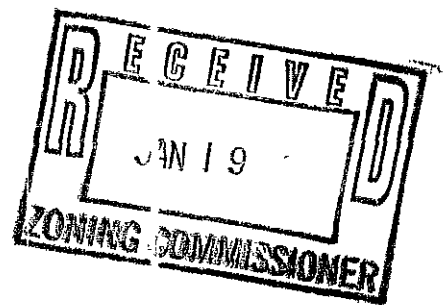
You are fully aware of the ever-increasing housing density in the surrounding Perry Hall, White Marsh and Essex areas with developers, supposedly under the 'mandate' to put the maximum number of units on every feasible building site. As traffic congestion, air and noise pollution, and general frustration increase and open space and freedom of movement decrease, desirability to live in these areas decreases.

It is a 'no-lose' situation for the developers. They stand to prosper handsomely from a lesser number of detached homes in a still very desirable living environment.

Thank you for your consideration.

Sincerely, *Sam, Patti, Elena*  
*Ortonette, and Angela*

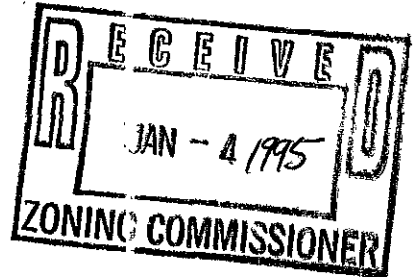
Sam and Patti Amato and Family



RECEIVED

7912 Hilltop Avenue  
Baltimore, Maryland 21236  
January 4, 1995

Deputy Timothy M. Kotroco  
400 Washington Avenue  
Room 112  
Towson, Maryland 21204



RE: Shirleybrook Townhouse Development

Dear Sir:

(XIV-338)

As a member of the South Perry Hall Boulevard Improvement Association, Inc., I was fortunate to be able to attend today's portion of the hearing on the dispute over the proposed townhouse community near Shirleybrook and Babikow. I am one of the newest members of this established neighborhood; living here since only 1992.

Part of the charm about this area is its rural atmosphere tucked away so neatly on the outskirts of the ever expanding "White Marsh growth" area. I believe like the majority of homeowners in our neighborhood, that this atmosphere will disappear if 100 plus new homes are clustered into the Shirleybrook Development. Based on current traffic patterns and a low estimate of only 2 adults per household, it's clear that if the townhouse development is approved, the near future could have nearly 1,000 people traveling Babikow and adjacent roads each day during peak hours. Is it realistic to believe that high density traffic of this nature on a "narrow back road" won't be encumbered by the familiar slow moving farm and sanitation equipment.

Having been a previous townhome owner in a Baltimore County community, I speak from experiences that probably most in my neighborhood have not had. Some of these experiences concern problems which are not being addressed during this hearing. However, at issue will be the larger concentrations of people into a small area which will certainly bring more traffic and accessibility issues. I believe our Improvement Association is trying to be proactive in requesting your ruling to deny the townhouse development which MUST utilize and ultimately change the shoulderless Babikow Road.

As a homeowner on Hilltop Avenue, I am also concerned that the traffic patterns will worsen around my treacherous corner as more and more people "cut" through from Perry Hall Boulevard and Ridge Road to get to Babikow. Although a 25 mph speed limit sign is posted, few comply; and there is restricted visibility at the Hilltop/Linda Avenue juncture. I have witnessed close calls and am told that prior to owning this home a car wound up on our lawn into a telephone pole because it failed to negotiate the turn due to high speed.

MICROFILMED



Page 2

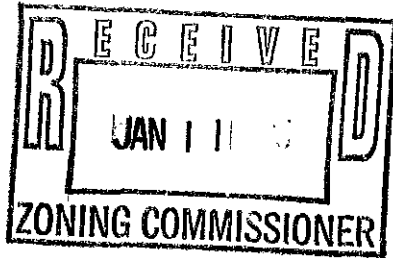
I hope you will view these issues first hand when you visit the site and our neighborhood. On behalf of some spectators who were perhaps too verbally zealous during today's proceedings, I thank you for your latitude and anxiously await your ruling.

Respectfully,

*Marjorie B. Stitz*  
Marjorie B. Stitz

cc: Mr. Burgess  
Mr. Seymour

MICROFILMED



December 29, 1994

Deputy Timothy M. Kotroco  
400 Washington Avenue  
Room 112  
Towson, Maryland 21204

Re: Shirleybrook Townhouses  
Babikow Road/Shirleybrook Ave.

Dear Deputy Kotroco:-

I have lived at 7719 Babikow Road with my daughter and son-in-law for 7 years. I am now 83 years old.


When we first moved here it was a quiet road with little traffic. However, since Perry Hall Blvd. was opened traffic has increased tremendously. I am now unable to go to our mailbox to get mail because I am afraid I might be struck by a passing vehicle. Usually the 30 mile per hour speed limit is not followed. Babikow Road is very dangerous for pedestrians.

I understand the planned townhouse development at Shirleybrook would put many more vehicles on this road which is already unsafe.

I hope you will consider my concern for my safety and the safety of all who live in this neighborhood and do not allow a high density development to go forth.

Thank you.

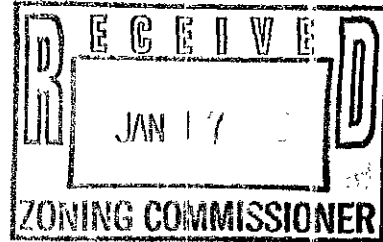
Yours truly,

  
Dolores D. Dannenfelser  
7719 Babikow Road  
Baltimore, Maryland 21237

RECORDED

Shirleybrook Avenue &  
Babikow Road Neighbors  
January 11, 1994

400 Washington Avenue  
Room 112  
Towson, Maryland 21204  
Deputy Timothy M. Kotroco



Dear Sir:

In regard to the Shirleybrook Village Townhouse Development:

- I. If 800 more vehicles are added to Babikow Road
  - A. Emergency Vehicles could not get through to our area because there is no shoulder for cars to pull on to let Fire Equipment or an ambulance to get through should it be needed.
- II. Where Hidden Entrance Sign is on Babikow Road coming north from King Avenue there is a driveway on the right side used by the Welsh, Beltz, and Winterstein Family's. It is like playing Russian Roulette to get out of this driveway. If you look left you cannot see traffic coming over the hill (try it).
- III. On Shirleybrook Ave. and Babikow Road if you look on the right side there is a deep ditch. Through the years trucks and cars have gone into it. One was an oil truck. Many residents have filled gas because we do not have gas pipes in our area. Just think what would happen should one of them would hit this ditch.
- IV. We have had many accidents at Linda Avenue and Babikow Road. You cannot see cars approaching from King Avenue because of the hill.

RECEIVED

- V. When they call us White Marsh that is wrong. We have never been known as part of White Marsh. Our zone is Golden Ring 21237.
- VI. Babikow Road will never be able to handle heavy trucks bringing in building equipment.
- VII. We resent the builder using the name we selected ourselves for their Village. Why not call it Jenkins Village
- VIII Anyone with driveways entering Babikow Road now has a long wait to exit. If any building is done in this area we will definetly need a traffic light installed at Buck School House Road and Babikow Road.

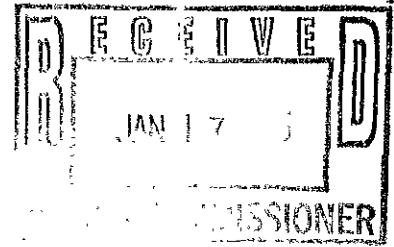
Sincerely,

*Jean & Rob Hettchen*  
*Hugh & Norma Couser*  
*J. Rosella Winterstein*  
*Mildred S. Vanatter*  
*William Cox*

MICROFILMED

January 12, 1995

Deputy Timothy M. Kotroco  
400 Washington Avenue  
Room 112  
Towson, Maryland 21204



Re:- Shirleybrook Townhouses  
Babikow Road & Shirleybrook Ave

Dear Deputy Kotroco:-

I had the opportunity of attending four days of testimony pertaining to the Shirleybrook Townhouse Development as above.

First, I must thank you for postponing the 11/30/94 Hearing and allowing our community to retain counsel. Without counsel I feel development of the townhouses would have already started.

After hearing all of the testimony, my mind remains focused on just two words - - neighborhood and infill.

Neighborhood means near and near means close. I do not consider Franklin Square Drive and Silver Spring Road close to my home and totally agree with Mr. Gerber's boundaries of our neighborhood, that is, I-95, a 10 lane highway, and I-43 and 6 lane highway.

Infill means small area not developed which is within an older community. This is the definition given by Mr. Wayne Feuerborn of Planning & Zoning and I think the parcel of land at Shirleybrook fits into this definition. Therefore, if this is infill you must abide by Baltimore County Code 26-282 - compatibility for these cluster townhouses and this development meets none of the objectives under this section and you should deny development in such a manner.

In many conversations with my neighbors, single family development of this acreage will also put a strain on our roads and other services but will be about one-half of what is proposed and will compliment the surrounding neighborhood. Townhouses will be visually offensive to the surrounding area.

When you visit, please remember that this area can remain somewhat a desirable location if allowed to develop at a low density rate. You have the power to allow this area to remain somewhat pristine or to urbanize and lose forever its charm and desirability.

Thanking you for your patience during the Hearing, I am

Very truly yours,

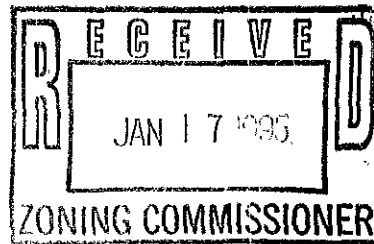
*Bernadine D. Seymour*

Bernadine D. Seymour  
7719 Babikow Road  
Baltimore, Maryland 21237

MICROFILMED

8001 Babikow Road  
Baltimore, MD 21237

January 11, 1995



Deputy Timothy M. Kotroco  
400 Washington Avenue  
Room 112  
Towson, MD 21204

Dear Sir:

We are writing to in regards to the Shirleybrook Townhouse Development Project which is being foisted upon us by persons from outside our neighborhood.

By this time you have received much input from our friends and neighbors decrying this project. Please do not toss this note into the "round file" because you feel that you have read enough negative comments. Because of your integrity, I am certain you will not do so.

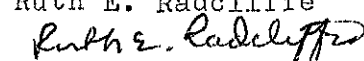
We do not feel that our neighborhood was completely canvassed before this project was begun. There is no reason to believe this development would be compatable to families who have lived here and gradually developed a quiet and wholesome community.

It is obviously a one home per lot community and townhouses, though quite utile and sometimes handsome, have no place in our neighborhood. As taxpayers for 45 years we feel we have rights to a placid and stable community.

Presentations given to you and court proceedings make us inclined to feel that the project is a "done-deal". Please, Sir, give this case an extra look and consider the wishes of all members of our neighborhood.

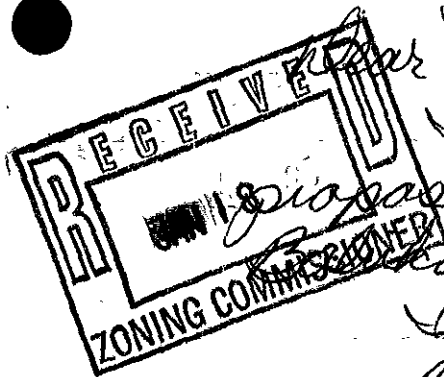
Thank you for your consideration,

  
George W. Radcliffe

Ruth E. Radcliffe  


ENCLOSURE

4824 Grove Run Road  
701116, Md. 21107  
239-7196  
January 17<sup>th</sup> 1995



Dear Mr. Kotroco,

I am writing in regards to the proposed Shirley Brook Development on Balikow Road.

I shall first identify myself as a member of the Mc Neal family. I live in the northeast corner of Carroll County near my husband's hometown; but I want you to understand that my ties are very strong to Balikow Road. My parents and family have worked, lived, and farmed continuously on the Mc Neal property since February 22, 1937, (it will be 58 years next month). My husband, children, grandson, and I frequent my home place on a regular basis. I have attended the community meetings concerning the Jenkins property as well as the hearings held over the last two weeks. I have done my best to keep abreast of the current plans for the Jenkins property. So now, I feel I must write you regarding this situation.

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There are a few things that keeps striking me as peculiar each time I hear them. One of them is the reference to Balikow Road as being part of the White Marsh Community. Never before have I heard Balikow Road called that. If you would ask any of the long time residents of Balikow Road (or one of the off-shoot streets) where White Marsh is, I feel certain their response would be "out Philadelphia Road." Prior to Perry Hall Boulevard, there was not an easy access to White Marsh from Balikow Road. At that time, the closest way was to go down King Avenue and out Philadelphia Road. I cannot understand how a highway linking Overlea to Perry Hall makes Balikow Road a part of White Marsh. White Marsh was isolated from our community because you always had to travel "around Robin Hood's Barn" to get there.



Even if you choose to ignore the neighborhood Mr Gerber described in his testimony of Thursday, January 5<sup>th</sup>, when you look at a map, you will find man made boundaries isolating the Balikow Road area to itself. I need not repeat them because you heard the testimony yourself. However, I feel I must impress upon you to understand that Perry Hall Boulevard has only provided the Balikow Road area with a more direct route to White Marsh. I fail to comprehend how that makes the Balikow Road area part of White Marsh.

Another area I have trouble understanding is how a group of town houses can be plunked down in the middle of single family homes in such a picturesque countryside neighborhood. I would think that any proposed developing of property would have to stay within

the confines of what has already been established in the neighborhood.

Mr. Kotroco, you have traveled this area and I am sure you know and understand that Balikon Road is not able to handle all the traffic this proposed development could generate. I know the developer cannot be held responsible for all the repercussions this development could create, but someone needs to use some foresight and control this situation before it becomes the total burden of the residents of the established neighborhood and the proposed development.

When my parents bought their farm on Balikon Road, their parents couldn't believe "they were moving all the way out there!" My ancestors would not believe what this sleepy little community is facing now. Mr. Bronstein called

this area "ketter skelter in appearance" because of the different style homes. But please notice and understand there is a common thread running through it all. This is a neighborhood comprised of single family dwellings. Many of these homeowners have been there for twenty plus years. Quite a few of these homes have sheltered the same family for several generations.

My parents have twenty five grandchildren and twenty five great grandchildren (with two more on the way). We all place a tremendous affection and concern for the Balukow Road community. We cannot understand how our "home place" has become a part of White Marsh. We cannot understand how townhouses can be placed in the middle of an old

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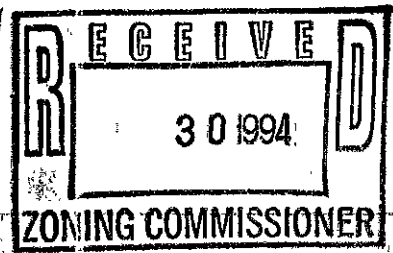
established rural neighborhood.

The foot step of progress has not tread in this little island of Baltimore County paradise. So I ask you Mr. Rotroco, to open heartedly and wisely consider all the facts of this case.

I as well as many others appreciate all the time and consideration you have given this matter. Thank you.

Very Sincerely,

Susan Mc Neal Fair



Mr. Timothy Kotroos:

Dear Deputy Zoning Commissioner,

I am writing concerning the proposed Shirleybrook Village.

My husband & I have lived on Shirleybrook Ave. over 30 years. We built this house and worked hard to pay for it with the intention of retiring in a peaceful rural community. We feel that building over 100 townhouses across the street would destroy that type of community.

We are not opposed to development of that property or any surrounding property, as long as it is developed with single family homes. We only ask that any developer adhere to the County's Master Plan & build single family homes compatible to the existing neighborhood.

If these <sup>town</sup> homes are allowed, they would encourage town homes in the surrounding available open space and compound the problems i.e.: schools - traffic.

We feel that looking at the back of fourteen townhouses with sheds, spotlights & trash cans would have a adverse impact to our quality of life.

MICROFILMED

We also have a grave concern for our safety and that of our neighbors. Babikow Rd. has become a short cut to the Mall and is a race way. It was never intended for the traffic it now bears. Exiting Shirleybrook Ave is dangerous now, townhouses in a development will only compound the hazard. Any improvement to Shirleybrook Ave would further encourage that becoming a back exit for the proposed "Avenue" and traffic from there would continue late into the night.

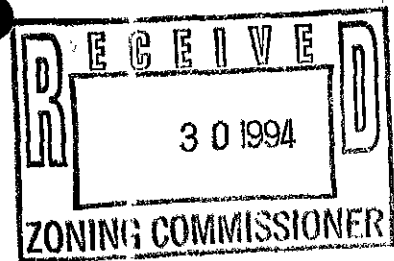
Shirleybrook Ave is comprised of 80% retired, elderly, frail, senior citizens. We move a little slower but are still citizens of Baltimore County, and look to you to protect our quality of life as well as our safety.

Some day you to will be old. Please consider us when you render your decision.

Sincerely

Margaret Winchester  
Roland M. Winchester





December 27, 1994

Deputy Timothy M. Kotroco  
400 Washington Avenue,  
Room 112  
Towson, Maryland 21204

Re:- Shirleybrook Village  
Townhouses  
Shirleybrook Ave/Babikow Rd.

Dear Deputy Zoning Commissioner:

I have lived at 7719 Babikow Road since August, 1987.

My greatest concern for the Shirleybrook Townhouse Development is compatibility. The closest townhouse development is over a mile away. I personally lived in a townhouse development for 20 years, but it was in an area of mostly townhouses.

I feel Baltimore County is becoming too urbanized and becoming an extension of Baltimore City and not a desirable place to live as it was in the past.

The proposed Shirleybrook Townhouse Development will contain townhouses selling at a price of about \$120,000.00 and this, I feel, will decrease our property values as most homes in the area are worth much more than \$120,000.00.

I urge you to consider the future of Baltimore County and allow development in this area to be low-density, that is, single family compatible dwellings.

Very truly yours,

*Bernadine D. Seymour*

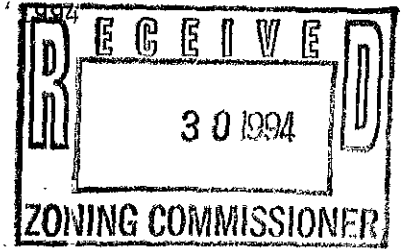
Bernadine D. Seymour  
7719 Babikow Road  
Baltimore, Maryland 21237  
(410) 391-6169

P.S. I have been a jogger since 1976 and when I first moved on Babikow Road I enjoyed using Babikow Road to Bucks Schoolhouse Road Route, but since Perry Hall Blvd. has been open and Babikow Road is used as a short-cut between Essex College and Whitmarsh Mall is is much too dangerous to run on Babikow Road during the week. It is only safe early Sunday mornings. High-Density development in this area will only make it more hazardous.

MICROFILMED



December 22, 1994



Deputy Timothy M. Kotroco  
400 Washington Avenue  
Room 112  
Towson, Maryland 21204

Re: Shirleybrook Village  
Townhouses  
Shirleybrook & Babikow

Dear Sir:-

I am somewhat a new resident of this neighborhood living at 7719 Babikow Road since August, 1987. Most of my neighbors have been here many, many years.

I believe the townhouse development at Shirleybrook will change the whole character of our community from a quiet semi-rural area to an urbanized extension of the bustling Whitmarsh Community.

I am not against development of this parcel, but it should be developed in a manner that is acceptable to the neighbors, many of which have spent most of their lives here. They should be listened to by Baltimore County as they have been paying taxes for many years. After all if this proposed development is approved, the Developer will return to his neighborhood and we will be left with more crowded roads, a decrease in our property values and probably an unstable neighborhood, as many current residents will be selling their homes and moving on to a more comfortable quiet setting which they currently possess.

I understand you are somewhat familiar with this area, but I urge you to return to the site and put yourself in our place, and then make your decision as if this were your personal neighborhood.

Very truly yours,

Thomas L. Seymour  
7719 Babikow Road  
Baltimore, Maryland 21237  
(410) 391-6169

RECORDED

Jan 2, 1995

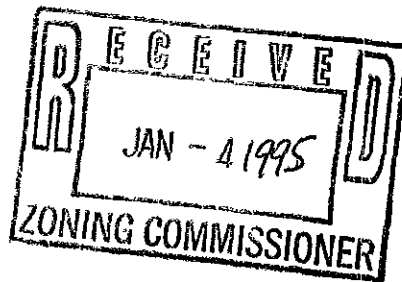
Mr. Rotundo

We live in this community since 1950. It has been a good place to live and we welcome individual homes. But bringing in town houses may change the whole environment. Low water supply, increase road traffic, sewage system, & as population increases so does security.

We would welcome individual homes.

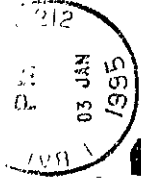
Ralph C. & Betty

File  
XIV-338  
Case  
Shirleybrook  
Dev. Plan

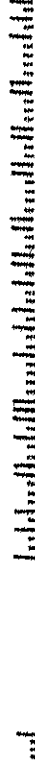


MICROFILMED

Ralph G. Beltz  
5005 Shiloh Leybrook Ave.  
Baltimore, Md. 21237



Deputy Hearing Officer  
Timothy Katoos  
400 Washington Ave  
Rm 112  
Lawson, Md.  
21204



Sat.

Dear Deputy:

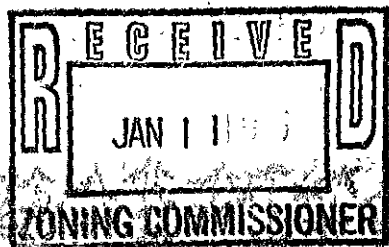
In regards to Shirley-  
brook Village Town house Development.

There are too many in White Marsh &  
Perry Hall now. I don't know what  
the County is thinking of to let them  
build so many around with only  
single roads some places.

You take your life in your hands  
when you pull out on Babikow Rd.  
when these little cars fly down the  
hills going to White Marsh to work or  
lots of little cars going toward College  
MICROFILMED house wouldn't be  
so bad because there wouldn't be

as many people or young people  
going to College.

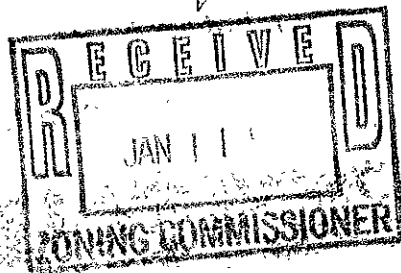
Also why does it have to be  
called Shirley Brook Village. We  
don't want anything to do with it.  
When the Ave. was first named  
it was Shirley Ave. The Postoffice  
made us rename it because  
there was another Shirley Ave in the  
zone. So why not rename it  
before it gets started. So the  
mail does get mixed up.



Sincerely,  
Mary E. Welsh

as many people or young people  
going to College.

Also why does it have to be  
called Shirley Brook Village. We  
don't want anything to do with it.  
When the Ave. was first named  
it was Shirley Ave. The Post Office  
made us re-name it because  
there was another Shirley Ave in the  
zone. So why not re-name it  
before it gets started. So the  
mail does get mixed up.



Sincerely,  
Mary E. Welsh











